

A
Complete Collection
OF
STATE-TRIALS,
AND
PROCEEDINGS
FOR
HIGH-TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;
THE FOURTH EDITION;
COMMENCING WITH
The Eleventh Year of the Reign of KING RICHARD II.
AND ENDING WITH
The Sixteenth Year of the Reign of KING GEORGE III.
WITH
TWO ALPHABETICAL TABLES TO THE WHOLE.
TO WHICH IS PREFIXED,
A NEW PREFACE,
By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE SEVENTH.

L O N D O N :

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T H E P R E F A C E.

AFTER the Publication of a Collection of *State-Trials*, which consists of Six Volumes in Folio; the Reader may possibly be surpris'd at the Appearance of two Volumes more of Collections on the same Subject. For this Reason it may be proper to provide some Particulars preliminary to the Work, concerning the Indisements there were to it, and the Method wherein it has been pursued.

And here we would by no means be understood to lay any Imputation on the Gentleman who prepar'd the last Edition of that Work for the Press. The judicious Preface he prefix'd to it, plainly shew'd him to be entirely Master of the Subject; and he perform'd, with eminent Sufficiency the Part he undertook, which was, to prepare and methodize such Trials, Printed or Manuscript, as were brought to him; to insert them in their proper Places, and to make Remarks and References wherever there was Occasion. The Business of collecting the several Pieces was by no means his Province, nor was it to be expected from one who had daily Avocations in the way of his Profession.

And tho' it were admitted that the then Undertakers did every thing they possibly could, to render the Work entire and complete, and spared neither Pains nor Expence to procure Materials fit for the purpose; yet it is no wonder, that in so fruitful a Field, they should after all their Diligence leave some Gleanings to reward the Industry of those that came after them.

They proceed'd in the first Edition upon a very scanty Plan, proposing to take in no Trials, but what were really *State-Trials*, and were taken at length and entire; and to this Plan they adhered strictly, except in a few Instances; but in preparing the second Edition, by the Advice of several Gentlemen of Learning and Candour, a greater Latitude was taken, and as well several Cases heard before the Court of *Star-Chamber* were inserted, as other Proceedings at Law, which could not properly be called *State-Trials*; and Trials which were well taken, tho' not of a Criminal Nature, were inserted, together with the dying Behaviour and Speeches of such unfortunate Persons as suffer'd Death upon their Convictions.

In almost every of these Particulars, these Supplemental Volumes will appear to have received many Additions and Improvements. The Cases here inserted, which were debated in the *Star-Chamber*, are such only as were considerable for the Curiosity of the Facts enquired into; as the Case of *Darwin* for sending down the Warrant for beholding the Queen of Scots, contrary to Queen Elizabeth's Order; or for the Figure and Season of the *Poison* conceiv'd; as Lord Chancellor *Bacon* and others. The Trial for a large Estate in *Shesholt*, wherein the Lady *Jey* was a Party, that of Mr. *Dowd* and others, for assaulting Mr. *Colpepper*; the Proceedings between the Duke and Dutchess of *Nesbit*, and his Grace's Trial with Mr. *Germans*; and some others were taken from printed Pieces, which, for their Price and Scarcity, were almost equivalent to Manuscripts; and we can with Truth say, that most of the printed Trials here made use of, cost above Ten times the Price, that an ordinary Piece of the same Size is commonly sold for.

As for the Trials in these Volumes which were never before printed, we are not at liberty to give the Reasons why we believe them to be Authentic; but we conceive the utmost Marks they bear will be to evident and convincing, to every one that reads them, of their being genuine, as to make any Proofs on that Head to be absolutely unnecessary.

We have been oblig'd in a few Places to transcribe here and there some Passages from larger Works; but in this Particular we have been as sparing as possible, having insert'd no more than was absolutely necessary to relieve the Connexion, and to make the whole more intelligible. The greatest Freedom taken in that kind has been in the Collection of Arguments and Debates upon the *Hobart Corpus Aci* and Liberty of the Subject, between the Years 1651 and 1650; in which we were oblig'd to be sometimes beholden (but as little as possible) to Mr. *Raguenett's* Historical Collections. As these Contests, between the Crown and the Subject, were one of the greatest Causes of the fatal Confusions which afterwards follow'd, and of that farprising Revolution which was the Abdolishment of all *Charters*, every Proceeding in that Affair, warranted by sufficient Authority, was thought worth preserving; especially as it related to what, next to the Life of the Subject, is deemed most precious in the Eye of the Law, his Liberty.

Some Gentlemen may perhaps think that Mr. *Raguenett's* Collection are so full on this Head, that it would be a Presumption to add any thing to them; but it will appear that most of the Speeches and Proceedings here printed are not taken notice of by Mr. *Raguenett*. How they came to be omitted, we will not pretend to determine; only we cannot forbear observing, as a strange Injustice of Partiality in that Editor, that after inserting the Articles against the Earl of *Stratford* at large in his Trial, he has abridg'd the Answer put in by him to his Articles, with this large-direction. *The Answer took three Hours, being above 200 Sheets of Paper, too long to be here inserted; yet take an Abstract of the said Answer to the articles exhibited against him, which are as follows.* Which Abstract is so vastly short, as not to contain above Ten Pages.

For fear of being thought partial, in order to swell the Price of the Book, we have omitted the Trial at large of the Earl of *Stratford*, it being to be had separate at a moderate Price. We don't doubt but his Answer at large would have been a great Ornament to this Collection, and would have enabled the World to judge more clearly of his Case, than it is now likely to do. But as all the Proceedings against him were finally order'd to be obliterated; so, with the utmost Enquiry, we have been unable to find any Copy thereof remaining with the Defendants of his Family, or in any other Hands.

The Case of *Abolition*, between the *East-India* Company and Mr. *Sandy*, does not, it must be confess'd, strictly speaking, come under the Description of a *State-Trial*; but as the publishing the Proceedings between the King and the City of *London*, upon a *25th* *Warrent*, in the last Edition of the *State-Trials*, met with general Approbation, we hope the like candid Construction will be put upon the Step we have taken in this Case. The Question of the Power of the Crown to grant an exclusive Charter, and the Difficulties to be made between a criminal Monopoly, the regal Privilege, and legal Property, are undoubtedly of the highest Importance. The Point is debated upon the Occasion by the most knowing and eminent Lawyers of the Time, and their Arguments are now full published from Manuscripts, which have not been taken notice of in any of the Law-Books now extant, (except a very short Abstract of some of the Speeches, which is printed in Mr. *Seymour's* Reports) to which are added, the learned Arguments and Reasons of the Lord Chief-Justice *Jaggis*.

There are some Instances where we have not been able to procure complete Trials, and yet have obtained either Speeches made in them by Gentlemen of Note at that time, or large and particular Relations, though not in so minute and exact a manner, as in Trials taken in Short-hand in Court. Where any thing of this kind has occur'd, which we judg'd worth notice, we have chos'to preserve them from the oblivion they would otherwise sink under, by inserting them in this Collection. And tho' they are not so valuable as *State-Trials*, yet they may serve to give a more clear Account of the Facts there treat'd, than is to be found in a general History; which, as the learned Editor of the *State-Trials* will observe, is one considerable Benefit arising from Collections of this kind.

Concerning the other Pieces contained in this Collection, we need be less particular in this place, as we have before most of the Articles, or in Not as the Bottom, given our Reasons for inserting them: Only let it should be thought that the remarkable Case of *Abby and White*, in the last Volume, contains so much that the small Book, published under that Name in Octavo in the Year 1705, it may be proper to observe, That the whole Proceedings and Debates of that memorable Affair are deduc'd in order of Time from the first Complaint made in the House of Commons; containing not only the Proceedings, Reports, Representations, Conferences and Resolutions, of both Houses, as publish'd by their Order, but also the Proceedings and Arguments in the Court of *King's-Bench*.

As we, as no Pains or Expence has been spared to make this Collection complete, useful and instructive; so we must submit the whole to the Judgment of the Publick, and rely upon the Candour of the Readers, for a kind Acceptance of our Endeavours.

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another to my Lady Elizabeth's Grace, ready to say this end, that they should ascribe against my Lord Protector's Grace.

Surely to fellowship as could be. Nowe what a kind of Death was this, that when he was ready to lay his Head upon this Block, he turned out the Lecherous Servants and forth, and my Servants spoke the Thing that he wotes of it Well, the Words were ever heard.

His first count confided them Papers, and they were found in a Chamber of his. They were so given between the Scoles of a school where. He made his yoke in craftily, and with such Workmanship, as the lyke had not been fore.

I was Prisoner in the Tower twelve, and I could never invente to make yoke his. It was a Wonder to hear of his Sabellity. He made his Pen of the Ajlet of a Paynte that he plucked from his Nose, and thus wrote these Letters for himselfe, as ye have heard, enlarging many matters as my Lord Protector's Grace, and to fourth. God had lye him to himselfe, he hadde chosen forlorn hym. What would he have done if he had lived still? thus went about this King. Charity (they say) worketh but good, not after this forte. Well, he is gone, he knoweth his fate by this, he is either in joy or in payne. There is an appearance over this lyke, but if he dye in the State of damnacion, he shall crye in the same. Yea, though he have a whole Moske to fynde for hym, he shall have his fynd sentence when he dyeth.

And that servent of his that confided and uttered this pene, was at hand name. He dyed honestly as he. God put it in his herte. And as for the tetter, whether he be saved or not, let it be to God. But surely, he was a wicked man, the Realer is well cryde of hym. It hath a traitor, that he is gone, he knoweth his fate by this. A terrible example furely, and to be noted of every man; nowe before he should dye, I heard by he had commendations to the King, and spoke many wordes of his Majesty. All is the Kings, the Kings. Yea, *Dear Fere*. Those were fayre wordes, the Kings, the Kings. It hath been the cost of all Traitors to pretend nothing against the Kings's Person, they are a pte of the matter to the Kings, but to other. Subjects maye not refuse the Kings's Magistrates, nor cōfide to do nothing contrary to the Kings's Lawes. And therefore these wordes, the Kings, and to fourth, are of small effe. I have heard muche wickednes of this man, and I have thought also, Joly, what wyl worth, what wyl be the end of this man? Among other (that went to execution) I heard of a woman woman, a naughty lye, a whore, a evayne body, and was ledde from Newgate to the place of execution, for a certain robbery that he had committed, and the hadde a wicked communication by the ways. This woman, I saye, as the wote by the ways, had wote and follyte talke, as this: That yf good fellows hadde kept touch with hye, he hadde not been at this time in that case; and amongst all other talke, the fiend, That such a one, named this man, had lye murthered fynde; and herebye this of hym at that tyme, I looked over what would be his end, what would become of hym.

He was a manne the farthest from the feare of God that ever I knowe or heard of an Exglobe. Fyfte he was author of all this women's wherefore. For if he had not had her myshapenes, he myght have been married, and become an honeste woman; whereas now he layng brought with hym, first fell afterwards by that occasion to dye. And they that were taught with hye fol to robbery, and the folowed; and that was he author of all this. This gave cause is requite, peradventure they maye come to be a hyge manne, but surely it is a great matter; and he, by unrepentance, let from evyl to worse, and then worse to worse of all, it is at the length he was made a spectacle to all the world. I have heard also, he was of the opinion that he believed not the immortalitye of the Soule, that he was not ryght in the matter. And it might wyl appear by the takinge of his death. But ye wyl say, What ye falsider, ye breake Charite.

Nay, it is Charite that I do, we cannot have no better use of bym now, than to use others to beware by hym.

Christ falsly, *Remember Lotte's Wyfe*! she was a woman that would not be content with her good state, but wrethted with God's collinge; and she was for that caufe turned into a Salt Stone, &c. Thus may this man be an example to us. Let as all subjects judge well of our Magistrates in such matters, and be content with theyr doings, and loke not so be of the Countaile.

And thus take I occasion to speake of him, and to proue you thereby, and I beseech you so to take it, as he may be a good warning to us, and this is the best use that wee can have of him now.

In his fifth Sermon he sayth. You wyl saye this, the Parliament House is wiser than I say, you might leave this to the defence of themselves: Although the men of the Parliament House can defende themselves, yet have I spoken this of a good state, and a good good of the Admirall's writings: I have not layned, not lyed our joce. I will now leave the honourable Countaile to answer for themselves. He confided our fall, he would have hadde the Governour of the King's Majesty, and wyl saye? He sayed, he would not in his minde have him brought up lyke a wode. I am fure he hath been brought up to godly, with such Schole-masters, as never King was in England, &c.

And in his seventh Sermon he sayth this: I have heard fay, what that good Queene (meaning Queene Catharine) that is gone, had ordered in her house daily prayer both before none and after none, the Admirall gettes hym out of the way, lyke a moule digging in the earth. He that be Lotte's Wyfe to me at long as I live. He was a covetous man, an horrible covetous man; I would these were no mo in England: He was an ambitious man; I would these were no mo in England: He was a felicitous man, a contented of Commune Prayer, I would these were no mo in England: He is gone, I would he had left none behind him. Remember you, my Lordes, that you pray in your houses, to the better meditation of your Felde.

II. Proceedings against Edward, Duke of SOMERSET, in Parliament, for *Misdemeanours* and *High-Treason*, Jan. 1550. 3 and 4 Edw. VI.

THE Duke of Somerset having taken the part of the common People against the Nobility in the busines of *scholares*, made himself many Enemies. He had also given great Grounds of Jealousy by entertaining foreign Troops in the King's Service; and the noble People who were rising in the *disorder* of the Rains of some Bishops Houses and Churches, drew so publick an Envy on him as any Thing he had done: And his acting by his own Authority, without asking the Advice of the Council, and often against it, was affording a regal Power, and fortified not to be endured by those who thought they were as all Points his Equals. Thus, all September, there were great Hatres between the Lords and him. The King was then at *Hampton-Court*, where the Protector shew was with some of his Retinues and Servants about him, which incited the Jealousies: for it was given out, he intended to carry away the King.

On the 6th of October, some of the Council met, and sent to the Lord Mayor and Aldermen of London to shew no Letters from the Protector, and wrote to the Nobility to inform them how they were proceeding. The Protector hearing of these Things, removed the King to Windsor in his hall, and armed such as he could gather for his protection: Whereupon several Letters passed between the Council at London, and those at Windsor; and at last a Proclamation was published against the Protector to the following effect: 1. That the Protector, by his malicious and evil Government, was the Occasion of all the Sedition that of late happened within the Realm. 2. The Lofs of the King's Princes in France. 3. That he was ambitious and fought his own Glory, as appeared by building of most sumptuous and costly Houses at the Time of the King's Wars. 4. That he esteemed nothing the great Council of the Councils. 5. That he sowed Division between the Nobles, the Gentlemen, and the Commons. 6. That the Nobles assembled themselves together at London, for none other purpose but to have caused the Protector to have lived within Limits, and to have put such Order for the Safety of the King's Majesty as appeared. 7. That he was the Protector's Doors were, which they sold were unsuitable, ungrate, and malicious. 8. That the Protector favoured the Council to the King, and did what in him lay to cause Variance between the King and the Nobles. 9. That he was a great Traitor, and therefore the Lords desired the City and Commons to aid them to take him from this his place. This was signed by the Lord Rich, Lord Cammell, &c. the Lord Sir John, President of the Council, the Mar-

quis of Northampton, the Earl of Warwick, great Chamberlain, and most of the Council. On the 12th of October the whole Council went to Windsor, and coming to the King, they presented, that all they had done was only out of Zeal and Affection to his Person and Service. The King received them very kindly, and thanked them for their Care of him. On the 15th they sat in Council, and then for those who were ordered to be kept in their Chambers, only *Cous* (afterwards the famous Lord Burleigh) was let go; and, in the end, the Lord Protector was commanded from the King's Presence, and committed to Ward in a Tower within the Cullie of Windsor, called *Black-hall Tower*; and the next Day, being the 16th, they brought from thence the Protector, and conveyed him to the Tower of London. Some Time after, the Lords returned to the Tower, and there charged the Protector with the following Articles of Misdemeanour and High-Treason**.

Articles objected to the Duke of Somerset.

THAT he took upon him the Office of Protector, upon express Condition, that he should do nothing in the King's Affairs, but by Advice of the late King's Executors, or the greatest Part of them.

1. That contrary to this Condition, he did hinder Justice, and subvert Lawes of his own Authority, as by Letters is by other Comend.

2. That he caused down Persons, arrested and imprisoned for Treason, Murder, Man-slaughter, and Felony, to be discharged, against the Lawes and Statutes of the Realm.

3. That he appointed Lieutenantes for Armies, and other Officers for the weighty Affairs of the King, under his own Writing and Seal.

4. That he commended such Ambassadors of other Realmes abroad, of the weighty Matters of the Realm.

5. That he would not use to receive divers of the King's most honourable Counsellors for declaring their Advice in the King's weighty Affairs against his Opinion, sometimes telling them, that they were not worthy to sit in Council; and sometimes, that he need not to open weighty Matters to them; and that if they were not agreeable to his Opinion, he would discharge them.

6. That against Law he held a Court of Request in his own House; and did enforce divers to answer there for their Freehold and Goods, and did determine of the same.

* For the Articles offered by the Protector, and the Letters that passed between the Lords and the King, see *Burns's Reformation*, Vol. II. in the Collection of Records, p. 416. 25.

† This proclamation, which had made him a Traitor, within three Days was called in again, with Commandment given none of them to be sold. *For's End of Mary's*, Vol. II. p. 117. 2. 117.

‡ *For's End of Mary's*, Vol. II. p. 117. 2. 117. The Duke was in the Tower a small Time before the Lords led the Articles to his Charge: But *Burns's Reformation*, Vol. II. p. 117. 2. 117. is called before the Council on the 14th, and that the Articles of his Accusation were then read to him.

8. That

2. That being an O'Clock, without the advice of the Council, or most part of them, he did deliver Offices of the King's gift for Money, grant Jewels and aids, and prebendations of Benefices pertaining to the King; gave Bishopsricks, and made sales of the King's Lands.
3. That he commanded alms and multiplacation to be preached, thereby to abuse the King's Com.
4. That divers times he openly said, that the Nobility and Gentry were the only cause of death, whereupon the people took to reform many of themselves.
5. That against the mind of the whole council, he caused Proclamations to be made concerning inclosures; whereupon the people made divers inclosures, and destroyed many of the King's Subjects.
6. That he sent forth a Commission, with articles annexed, concerning inclosures, common, highways, cottages, and such like matters, giving the Commissioners authority to hear and determine those causes, whereby the laws and Statutes of the Realm were subverted, and much Religion misused.
7. That he suffered Rebels to assemble and be armed in Camp, against the Nobility and Gentry of the Realm, without openly repelling of them.
8. That he did comfort and encourage divers Rebels, by giving them money, and by promising them fees, rewards, and services.
9. That he caused a Proclamation to be made against law, and in favour of the Rebels, that none of them should be vexed or fined by any for their offences in their Rebellion.
10. That in time of Rebellion, he said, that he liked well the manners of the Rebels, and that the aversion of gentlemen gave occasion for the people to rise; and that it was better for them to die, than to perish for want.
11. That he said, the Lords of the Parliament were loth to reform inclosures and other things, therefore the people had a good cause to esteem themselves.
12. That after declaration of the defaults of *Bolton*, and the pieces thereof, by such as did survey them, he would never amend the same.
13. That he would not suffer the King's pieces of *Northampton*, and *Buckingham*, to be furnished with men and provision; albeit he was advertised of the Defaults, and advised thereto by the King's Council; whereby the French King was emboldened to attempt upon them.
14. That he would neither give authority, nor suffer Noblemen and Gentlemen to suppress Rebels in time of rebellion; but wrote to them to seek the Rebels out, and slay them gently.
15. That upon the 5th of October, the 22nd year, at *Hampton-Court*, for defence of his own private causes, he procured seditious bills to be written in counterfeit hands, and secretly to be dispersed unto divers parts of the Realm; beginning thus: *God People*; inciting thereby to raise the King's subjects to Rebellion and open War.
16. That the King's Privy Council did counsel at *London* to come to him, and move him to reform his Government, but he hearing of this assembly, declared, by his letters in divers places, that they were high Traitors to the King.
17. That he declared entirely, as well to the King as to other young Lords attending his Person, that the Lords at *London* intended to destroy the King; and desired the King never to forget, but to revenge it, and desired the young Lords to put the King in remembrance thereof; with intent to make faction and discord between the King and his Nobles.
18. That at divers times and places, he said, the Lords of the Council at *London* intended to kill me; but if I die, the King shall die; and if they slay me, they shall slay him.
19. That of his own head he removed the King suddenly from *Hampton-Court* to *Winchester*, without any provision there made, that he was thereby not only in great fear, but fell thereby into a dangerous disease.
20. That by his Letters he caused the King's People to assemble in great numbers in armies, after the manner of War, in his aid and defence.
21. That he caused his servants and friends at *Hampton-Court* and *Winchester*, to be apprehended in the King's armies, when the King's servants and guards were unarmed.
22. * That he caused at *Winchester* his own person in the night-time to be guarded in himself by many persons, leaving the King's Majesty's person unguarded, and would not suffer his own guards and servants to be next the King's Person, but appointed his servants and friends to keep the gates.
23. That he intended to fly to *Jersey* or *Wales*, and laid path-boards and men, and a host, to that purpose.

After he had read and considered the above Articles, he sent the underwritten submission to the Lords.

Edward Duke of Somerset's First Submission.

I *Edward*, Duke of *Somerset*, have read and considered these first twenty-nine Articles before specified, and do acknowledge my said offences, faults, and crimes, done and contained in the same, and most humble protest as my knees, do fallle and wholly submit my selfe to the most honourable mercy and clemencie of the King's Majesty, for the moderation of my said offences; having my full trust and confidence, that his Majesty, with the advice of his Highnesse most honourable Councill, will consider mine offences, faults, wrongs, and proceedings; that if any of my said offences be by his clemencie pardoned, remitted, or otherwise discharged, that I may enjoy the benefit thereof, although the same become un-

known. And further, I do most humbly beseech all my Lordes, and other his Majesty's most honourable Councill, as much as he means to his Majesty, to take away all consideration mine offences to have proceeded from of ignorance, negligence, folly, wilfulness, and for lacke of due consideration, than of any wicked or malicious hart, evil intent or thought, tending to ane Traitor to his Majesty in the Realm; But that if my grace his Majesty, by the honorable advice of the said good Lordships, to have pity upon mee, my wife and children, and to take some more will with me, not accord me in the contrary, and his letters, but after his great goodness and clemencie, whereunto whatsoever or shall see, I do most humbly with all my hart submit my selfe.

Written with mine own hands the 23rd Day of December (Baronet says the 23rd) on the pylours of our Soverain, at Lord King Edward the Sixth.

However, on the second of January, a Bill was put in against the Duke of *Somerset* of the Articles before-mentioned, with the above Confession. This he was prevailed with so, upon assurance given, that he should be gently dealt with, if he would truly confesse and submit himself to the King's mercy. But some of the Lords said, they did not know whether that Confession was not drawn forth by him by force; and that it might be as if he had subscribed them freely and uncoerced. Whereupon a Committee was appointed of four Temporal Lords and four Spiritual, who went first to examine him concerning it. The day following the Bishops of *Exeter* and *London* made the Report: That he charged them for their kind message, but that he had freely subscribed the Confession; that he was free from it, and that he had no unreasonable desire against the King or his Realm. So both Houses have passed the Bill against him, and he was fined, by Act of Parliament, entitled, *de Affirmatione Fidei et Rationis de Duke de Somerset*, that as for the punishment of his late misdemeanors, whereby he was fined 30000, a year of land, and left all his goods and effects. Upon this, he sent another submission.

The second Submission of Edward Duke of Somerset, Prisoner in the Tower.

I AM most fearful and full of heaviness, my very good Lordes, to undeclare that my last letter was no longer accepted at your Lordships hands, to whom I am bound during my life, for your most gentle and merciful dealings with me, that it pleased your goodnesse to bring my case to a fine. I trust your Lordships never think that ever I did, or would intend, to stand against the King's Majesty and your Lordships Goodness, or that I would put about to just for my cause, saving his Majesty and your Lordships honour, clemencie, mercy, and pardon. Although the use be not unreasonably, yet I do not want my selfe whole to his Highnesse and your Lordships mercies. I pray onlie the moderation of it, and did ever to declare to your goodnesse, mine intention to leave it. And yet referred all to his Majesty, and your wisdom, goodnesse, and discretion. And I most humbly desire your Lordships not to think that I was about to contend with your Lordships, when I did speak of my confessions, I might see, in that I thought I did for the best, as I do acknowledge and confesse, that neither I am the wisest man in the world, nor yet if I were, I should not escape without a most singular grace, but more than I should deserve: But I leave all that, and most humble, humble, humble, and lowly, I submit my selfe to the King's Majesty, and to your good Lordships; appealing from the rigour and extremity of his Majesty's laws, to his Majesty's great mercy and clemencie; praying your goodnesse to have mercy to his Majesty, not to be offended with me, nor to exclude his Majesty's mercies benignity from me, for my weakness and lack of discretion, but to accept my good mirth as one that I have would do that were well. And when I cannot or have not done that things I ought to do, I would gladly amend, and am ready at all times without condition to do and suffer whatsoever that thing that your honours will appoint me, accepting what clemencie mercies lower I obtaine to be of his Majesty's and your goodnesse. Most humbly on my knees praying his Majesty and your good Lordships to pardon mine offences, and to order me for them, as to his most high merciful clemencie shall appear convenient. And finally flying from the extremity of justice, desire mercy, as you have, and call, most merciful Counsellors, mending my wrongs and doing them as of *Beaufort* or *Hubbards*, but still for lack of discretion and wisdom. For the which once again I require pardon and grace to be showed, and if it pleased your good Lordships to have me, I trust you should find me lowly unto your honours, and to conformable unto your Lordships orders, that I trust to make amends, and obtaine pardon for my former folly. And thus I most humbly commend your good Lordships to Almighty God, to whom I shall always pray that ye may long continue in honor. *From the Tower, the second of February.*

He came out of the Tower on the 6th of February, giving bond of 10000. for his good behaviour, but limited that he should stay at the King's house at *Stoke*, or his own at *Ston*, and should not go four miles from them, nor come to the King or Council, unless he was called; and when he knew that the King was to come within four miles of these houses, he was to withdraw from them.

* This Article is in *Small Chronicle*, but omitted in *Hayward's Life of Edw. VI.* and *Somerset's Reformation*.
 † *Reynolds*, Vol. VIII. O. 22. 699. Upon these same Articles, to which it was then so little known, he was first to the Tower; those where he had taken so much pains to humble himselfe had his private judges. He could not deny that most of the facts in his charge were true. But the question was, Whether they were crimes? He was accused neither of fraud nor of rapine, nor of extortion. But that was to be decided only by the peers of the Realm, or by the Parliament.
 ‡ Many thought *Beaufort* in a very large throat, and aggravated the algebrity of such a behaviour. But it was doubtless possible they would have been glad he should have taken another throat, which should not have failed to prove fatal to him. This assertion, that among the articles of his accusations, there were several which could be justified only by the algebrity, which would force have forced his turn in the House of Peers: the major part of whom were not inclined to favour him. For instance, he was accused that he had caused the King's People to assemble in great numbers in armies, after the manner of War, in his aid and defence. It is true, he might have allowed the King's Peers. But it was the Peers of a great King, between ten and eleven years old only, who looking upon him as his Governor, did every thing by his advice; whereas the Duke could never have cleared himself upon this Article, any more than upon several others. Consequently his only remedy was to own having guilty of all, and to call himself upon the King's mercy. Besides, it concerned him highly to get out of prison if it was possible on any terms, that it was dangerous for him to continue any longer in the hands of his enemies. *Reynolds* (Vol. VIII. p. 4.)

These which, being in their Place, for fear knew not where they were. And I pray which was their first among the rest, being all afraid as they (I say) truly, Good Will altogether smothered, looking when any Man would smother me on the Head.

In the mean time, whilst these things were thus in doing, the People by Chances (upon our Sir *Anthony* being riding into the Scaffold, which was the occasion of a new noise, for when they saw him coming, they concluded that which was not true, but notwithstanding which they all would for, that the King by that Melinger had sent his Uncle pardon, and therefore with great rejoicing, and calling up their eyes, they cried out, Pardon, pardon. I come. God I live the King. This this good Duke, altho' he was deliberate of all Man's help, yet he saw before his departure, in how great love and favour he was with all Men. And truly I do not think, that in so great slaughter of Dukes as hath been in England within these few years, there were so many weeping eyes as one mine, and as without cause: for all men did sit in the decay of this Duke, the publick run of all England, except such as indeed did perceive nothing. But now to return from whence we have strayed, the duke in the mean time standing still in the same place, madly, and with a great countenance, made a sign to the people with his hand, that they would keep themselves quiet. Which thing being done, and silence obtained, he spake unto them in this manner.

Dear! beloved Friends, there is no such matter here in hand, as you vainly hope or believe. It forceth this good unto Almighty God, whose Ordinance it is meet and necessary that we all be obedient unto. Wherefore I pray you all to be quiet, and to be contented with my death, which I am well willing to suffer, and let us now join in prayer unto the Lord for the preservation of the King's Majesty, unto whom hitherto I have always showed myself a most faithful and true subject. I have always been most diligent about his Majesty in his affairs, both at home and abroad, and no less diligent in loving the common commodity of the whole Realm. At which words all the People cried out, and said, it was most true.

Then the Duke proceeding, said, Urne whose Majesty I with continual health, with all felicity and all prosperous success. Whereunto the people again cried out, Amen.

Moreover, I do wish unto all his Considerers the Grace and Favour of God, whereby they may rule in all things agreeably with justice. Unto whom I exhort you all in the Lord, to show yourselves obedient, as it is your bounden duty, under the pain of condemnation, and also most profitable for the preservation and safeguard of the King's Majesty.

Moreover, forasmuch as heretofore I have had oftentimes affairs with

The CASE of the Marquis of Hertford, touching the Dukedom of Somerset, A. D. 1660, when the Bill was brought into Parliament to restore him to the Title of Duke of Somerset.

EDWARD, Earl of Hertford (great Grandfather of the said Marquis) was by Letters Patents under the Great Seal of England, bearing date the 26th of April, a *Edw. VI.* created Duke of Somerset, to hold to him and the Heirs Males of his body, upon the body of the Lady Anne his then wife begotten, and to be begotten, for ever, with several other remainders over in tail.

The said Duke afterwards, viz. in *Michaelmas-Term*, 5 *Edw. VI.* was indicted of Felony, for procuring and stirring up others to raise and impair *John Earl of Warwick* (one of the King's Privy-Council), which Indictment (tho' void both in matter and form) was pretended to be grounded on the Statute of 3 and 4 *Edw. VI.* which makes it Felony to stir up and procure others to take away the Life of any of the King's Council; but this Indictment was only for stirring up others to impair a Privy-Councillor, (which was never raised into Act) and the same declared and branded in print to be void by learned Judges. Yet the said Duke was found guilty of Felony, and put to death for this fact, which was but a pretended Felony; and it is true, yet so small I dare forbearable thereby.

The malice of his enemies not satisfied with his blood, afterwards by their power (in the infancy of the Duke's Heir, who continued and was

* And he is further made, That the said Duke and his Heirs Males, begotten upon the Body of the said Lady Anne for ever, shall, by authority of this Act, lose and forfeit unto your Highness, your Heirs and Successors for ever, and also be deprived from hereafter for ever, as well of the Names of Viscount, Marquis, Earl of Hertford, and Duke of Somerset, and every of them, as also of all and every other, by and their Heirs or Successors, Deputies, Clerks, Attorneys, and Stewards, by whatsoever Names or Names be the said Duke hath been called, named, or created, by any Letters Patents, Writs, or otherwise.

divers Men, and hard it is to please me, that I should see it done by any that hath been offended and injured by me, I am verily capable require and ask him frequently, but especially Almighty God, who is present throughout all my Life I have most grievously offended; and as for my adversaries, they be that have offended me, I do with my whole heart forgive them. Now I once again require you, dearly beloved in this house, that you will keep yourselves quiet and still, lest through your tumults I might trouble me. For albeit the Spirit be willing and ready, the Flesh will not and warring, I and thro' your questions, I shall be much more quiet. Moreover, I desire you all to bear me witness, that I die here in the faith of Jesus Christ, desiring you to help me with your prayers, that I may perceive constant in the same unto my life's end.

After this, he turning himself again about like a mock Lamb, knelt down upon his knees. Then *Dur.* who was there present to counsel and advise him, delivered a certain Scroll unto his head, wherein was contained a brief confession unto God, which being read, he stood up again upon his feet, without any visible of Mind, (as it appeared) and first had the Sheriff's sword, then the Lieutenant of the Tower and others, taking them all by the hands which were upon the Scaffold with him. Then he gave the Hangman terms of mercy. Which done, he put off his gown, and kneeling down again in the draw, under his death-smiter. After that, the Hangman coming unto him, turned down his collar round about his neck, and all other things which did let or hinder him. Then lifting up his eyes to Heaven, where his only hope remained, and covering his face with his own handkerchief, he laid himself down along, showing no manner of token of trouble or fear, neither did his countenance change, but that before his eyes were covered, there began to appear a red colour in the middle of his cheeks.

Thus this most meek and gentle Duke lying along, and looking for the stroke, because his doublet covered his neck, he was commanded to rise up and put it off, and then laying himself down again upon the block, and calling thrice upon the name of Jesus, saying, *Thy forgiveness!* As he was the third time repeating the name, even as the name of Jesus was in uttering, in a moment he was bare both of head and life.

John continued in a difficult condition, deprived of all his titles, till Queen Elizabeth, in the first year of her reign, created him Earl of Hertford, and Baron Somers, and his Grandson, *William Earl of Hertford*, was created Marquis of Hertford, 1640, and in the year 1660, he preferred the following Case to the House of Peers: which giving a great light unto that proceeding is here inserted.

The CASE of the Marquis of Hertford, touching the Dukedom of Somerset, A. D. 1660, when the Bill was brought into Parliament to restore him to the Title of Duke of Somerset.

Edward Duke of Somerset for several months after his Father's death, procured an Act of Parliament in the same year, 5 *Edw. VI.* intitled, An Act touching the limitation of the late Duke of Somerset's Lands, wherein there is a clause obliquely intimated, to take away the said House for entitled as aforesaid, which, by no Felony (how notorious known the same had been) could by law have been forfeited.

This being a case unprecedented, both in law and history, and to contrary to the rules of law, justice and reason, to have an attainder of Felony made, for an offence, which apparently neither then, nor at any time after was Felony, and if a felony, yet to have a forfeiture extended beyond the offence, (if there were any) and to be so maliciously prosecuted after the death of the said Duke, (who was most instrumental in bringing about the blessed Reformation of Religion) it is humbly conceived to be such an agreeable to justice to restore the said Marquis, who is Heir Male of the body of the said Duke and the Lady Anne his wife, to his ancient Honour, so illegally taken away as aforesaid.

Whereupon, in September 1660, the said Marquis of Hertford was recalled to the Dukedom of Somerset, by a repeal of the Act of the 5th of *Edw. VI.*

IV. The Arraignment of Mr. Davison in the Star-Chamber, upon Tuesday the 28th of March, 1587, 30 Eliz.

Before Sir *Crispian Wray*, Chief Justice of England, who for the Time sate as Lord Privy-Seal; the Archbishop of Canterbury, and the Archbishop of York; the Earl of Worcester, the Earl of Cumberland, and the Earl of Lincoln; the Lord Grey, and Lord Lumley; Sir *James Cressy*, the Comptroller; Sir *Gilbert Gerrard*, Master of the Rolls; the Lord Chief Justice of the Common-Pleas; *Edmond Anderjyn*; Sir *Roger Manwood*, the Lord Chief Baron; and Sir *Walter Mildmay*, the Chancellor of the Exchequer;

For hearing of a Matter of Misprision and Contempt against Mr. *Davison*, late one of her Majesty's Secretaries, and one of her Privy-Council, by Virtue of a Commission to them directed.

Whereupon Mr. *Papdon*, the Queen's Attorney-General, spake in form following:

My Lords, I am to inform your Lordships in her Majesty's behalf, of a certain great and grievous Contempt and Misprision against Mr. *Davison*, then Prisoner at the Bar, late one of her Majesty's Secretaries. The manifold and sundry practices committed by the said Queen are not unknown unto your Honours, which were offences in the highest degree, and required to be looked unto with speed. It is well known unto your Lordships also, that thereupon, by earnest intreaty and intercession, her Majesty at length considered that the matter should be heard and decided according unto law. Whereupon were those honourable pro-

ceedings had at *Peterborough*. But the residence which belonged thereto, to-wit, the execution, her Majesty politely neither commanded, nor desired, offering no clemency in the former, nor wisdom in the latter. Which course, she held from the 15th of October, till November, December and January. During which time, most horrible conspiracies against her Majesty's Sacred Person were contrived, most false rumours that the said Queen was escaped spread abroad, and bearded that foreigners were landed for invasion, all which, for preservation of the said Queen, and prejudice of ours. Upon these considerations, her Majesty affirmed to sign the Warrant for her Execution, by whom such tumults were raised. Notwithstanding, being

4. Copied from a MS. in Goss College, Cambridge, Cl. A. 100. 2. p. 48.

5. Queen Elizabeth undertook to make the execution of the Queen of Scots was done against her will, and without her knowledge; the way for work was thus: Davison was the instrument for made out of, without his knowing any thing of the matter, to add this fact of *Conspiracy*. A little before the Queen of Scots' death, he was made Secretary of State, and it is very likely he was put into that post on purpose, that he might be drawn into the same, and made accountable for Mary's death. *Repts.* Vol. IX. (Old Edit.) pag. 107, 108. See also pag. 109, 110, 111, 112, 113, 114, for more particulars of this affair.

being moved to enquire by her great wisdom, the thought necessary to have it in readiness, a day, attempt should be begun, and yet not in haste to execute at that time as I said, she left with Mr. Darcy to carry to the Great Seal, to have it in readiness as aforesaid. And he, after the sealing, and without her Majesty's commandment, procured it unto the Lords without her privy, contemptuously. Nevertheless, upon the Lords' demand to him, her Majesty bid him ask secrecy. And upon without made by the Lords whether her Majesty consented in that mind for execution of the said Queen, he said, she held that course still; and upon further question made, that her Majesty would not be further troubled with that matter. Whereupon the Lords, for no impediment, dispatched an execution, wherein Mr. Darcy did break the secrecy her Majesty repaid in him, in delivering it unto the Lords, and dealt very contemptuously in not making her privy, knowing her mind to be to the contrary. For her Majesty said Mr. Killigrew unto him, commanding him, if it were not sealed already, it should not be sealed; and after, when he said her Majesty it was sealed already, she asked him what he said? That as to done by him, he being but a particular Counsellor, her Majesty took care it a matter of high indignity and abuse of her Commissions, and a wrong of the greatest moment that ever happened since her Majesty, since which time never any Counsellor in matters of far less importance proceeded without a resolution or privy: which thing she leaves to your Honours consideration for punishment thereof.

Darcy, with a cowardly countenance, replenished with gravity, a fine delivery of speech, but a voice somewhat low (which he excused by late sickness) discreetly answered in first ensuing:

My Lords, I am right sorry, that an action of this nature, for the honourable proceedings against the said Queen, than which never was any thing more honourable, should after the full and laudable performance thereof be called into question. Again, my Lords, I am most sorry that her gracious Highness should conceive such an high displeasure against me, as to trouble your Honours with me at this present. But as in all such actions heretofore, I have been most faithful and forward to do her Majesty's commandments; so in this, by your Honours favour, let me bear the testimony of my confidence, that I have done nothing either willingly or unwillingly, but as became an honest man. And therefore, first, that I delivered it unto the Lords without her commandment, or against her commandment, let it be lawful for me with your Honours leave to justify the contrary. To that the Attorney answered, I said not that you delivered it unto the Lords against her commandment, but that you knowing her mind in this manner to Mr. Darcy to be repaid, Well, then, I desire to have the proof: whereupon the Solicitor-General read his examination, wherein to the sixth point he saith, that after the sealing she said he made her not privy to the sending down. Mr. Darcy to that answered, My good Lords, the Warrant for the execution was signed and sealed by her Majesty's express commandment; which being so, I take it to be irrevocable in law. Whereupon, by the Advice of the Lords it was sent down, the not being privy to sending down, wherein I thought I dealt as befemed me: for wits of execution do not use to count to her Majesty. That I was so forward, I thought it my duty, and for no other reason I possibly for I never had any private grudge or hatred against the Queen of Scots, but as respect of my Country and Common-Weal. The Warrant sealed with me six Weeks before I presented it, and when I presented it, my Lord Admiral will witness I was first for. The place I held, I proved I never sought for, it pleased her Majesty for some gracious opinion of me to permit me thereunto. In which I am assured I have not committed any wilful error, but as an honest man should do for nothing in the world is more dear to me than my reputation. I confess I said to some Lords, I took it to be her Majesty's pleasure to proceed therein, and I appeal to her Majesty's own conscience if I find not cause to thank for. But she is my most gracious Sovereign, it is not my duty to say, if the contrary; I will not stand in contestation with her, for it becomes me not, and therefore I submit myself to what punishment your Honours shall please to lay upon me.

Though the above Trial of Mr. Darcy is very full, yet, as the underwritten one, copied from a MS. in the Bodleian Library, under the Title *Juridici*, 7843. 862. pag. 335. being something different, taken by an Eye-witness, and being short, we hope it will prove acceptable to the Reader, especially as it relates to the Treason of Mary Queen of Scots; whose Trial in Vol. I. pag. 155. is very defective.

Ex M. S. p. 308.
Robertus Sherrell, } 25 Martii 1587.

THE Proceedings against Mr. Darcy in the Star-Chamber, by Commission not read, but directed to the thirteen following:

1. The Lord Chief Justice of England, as Lord Privy-Seal for that day.
2. The Lord Archbishop of Canterbury.
3. The Lord Archbishop of York.
4. The Earl of Worcester.
5. The Earl of Cumberland.
6. The Earl of Lincoln.
7. The Lord Gray.
8. The Lord Langley.
9. Sir Thomas A. Craft.
10. In the above Trial, called Craft. But in the Trial of the Earl of Arundel, 1589, he is called A. Craft. See B. 1. 1. Trial, Vol. I. p. 371.]
11. Sir Walter Mildmay.
12. The Master of the Rolls.
13. The Lord Chief Baron.
14. The Lord Arundel.

The sum of that which was proposed, and enforced against him by her Majesty's Commissioners at the Law.

The matter laid against him is a great and heinous indignity, as her Majesty taketh it, committed by him in this last proceeding against the said Queen, which although it were in itself most just and honorable, yet in the manner of doing concerning it, Mr. Darcy is charged with by her Majesty with want of Duty. For whereas by the manifold defects of the said S. Queen, and that as the judgment of all the Realm in Parliament her life was now to satisfy the Law, and thus necessary for the

To that the Solicitor (*Ex parte*) answered; Mr. Darcy, you do well to extol the honour of the proceedings, for it becometh you, and to the truth was. But I must tell you the more honourable the proceedings were, the more is your contempt in not making her privy. In referring the execution, I note her Majesty's magnanimity, who not regarded the dangers of her own fall, to continue in other's life. And yet her wisdom is therein to be commended, who thought good to have it in a readiness, with intention to have clamour as long as might be. In not consulting with her Majesty your offence doth, but by your means was a great contempt, and farther, the said to you, you should sit it with great secrecy.

To which Mr. Darcy said, I confess it, and the Solicitor replied, Why then that was a caution not to do it without her consent: for notwithstanding your intention was good, it was a fatal error. Whereupon Darcy rejoined, She is my most gracious Sovereign, as good a Mother unto me as ever any Prince had, and what I have, I had it of her hands. I hope, therefore, my Lords think me not to intend as to offend her, unless by neglect; but that I did it willingly or willingly, I protest I did it not. And notwithstanding the loss Mr. Killigrew said it should not be sealed, it is not sealed already, yet it is proven not but that the said was sealed, do it where it was sealed. She said unto me, What saith? Wherein I answered, I had done it by her Majesty's commandment, and that such a thing might not be called with. Now, my Lords, the reason to move me to think it was her Majesty's meaning, were familiarity and want of skill, the honour and justice of the cause, next, I knew of an amendment from beyond the seas of her Majesty's imminent dangers. Alas! I was privy to the proceedings at Fotheringhay. I was notwithstanding of the things in Parliament. Left of all, the ransom of Scotland, the uses and customs in the Realm, which moved me, being no private commandment to the contrary, as I did. When he had said this, his adversaries told his examination, where to the second he saith, when her Majesty had him in custody, he said he would be as careful and secret as should need: so the third, he confessed it. Killigrew came unto him, telling him, if it were not sealed already it should not be sealed. To the fourth, after the Warrant was sealed, her Majesty asked him, What saith? Wherein Darcy answered, that her Majesty commanded me to keep it secret, and I told the Council of it, how can it be thought of for that? For her Majesty had me expressly from her Secretary *Walsingham* thereof; my Lord Chancellor must needs know it, so much as he must feel it. And her Majesty made my Lord Admiral privy thereto; so they might I not make it known in some other than these chief Counsellors? To that, said Mr. Attorney, Though Mr. *Walsingham* should know it, yet it was not general. Mr. Darcy answered, Neither was I verbally commanded to conceal it upon the fact. Then said the Solicitor, Another matter makes against you, my Lord Treasurer did ask you, whether it was her Majesty's pleasure? And you answered, Yes. To that said Darcy, I remember not that. The Solicitor replied, It is my Lord Treasurer's testimony. And Darcy rejoined, I reverence his testimony, and proceeded, saying, my Lords, the cause is between her Majesty and me; she is my gracious Sovereign, and I her servant, it becometh me not to say, if the contrary, neither could I, as I said, confess against her; yet let me protest, that, in my own conscience, I have dealt as sincerely, faithfully and honestly as any servant could do. Then spoke the Lord Chief Justice of England, saying, By that, if the asked you, What saith? You might know it was her pleasure to defer it, and therefore you do it without her commandment was a great offence. Then spoke *Grosvenor*, the Queen's Sergeant: My Lords, four things I note that Mr. Darcy's conduct is full, that her Majesty bade him ask secrecy; next, the Warrant being sealed, Mr. Killigrew was sent unto him, that were it not sealed already, it should not be sealed at all. Thirdly, he confessed her Majesty was content he should show it Mr. *Walsingham*, which proves the minded to keep it from the rest. And it had been his duty to have known her pleasure; and therefore for so much as he confessed this,

preference of the whole Realm, as was desired; yet her Majesty, of her natural most gracious and merciful disposition, after the so honourable condition and proclamation of the S. Queen's guiltiness, notwithstanding so many important allegations and vehement intercessions, could not be brought to condemn to the execution; rather desiring by all means possible, if there were any hope of amendment and reclaim, to spare where the might honourably fill, than to spill where the might honourably spare; and in this mind he continued from October to the end of January. But when the law that her malicious enemies daily increased their wicked attempts against her and the State, that tumours were forced and information given daily of attempts by treason, by rebellion, by violence upon her Royal Person, to work a change and delivery of the said S. Queen, the most wisely referred at length to have a full and mature judgment, agreed according to Law and Justice, in a readiness; whereby upon all occasions or occurrence, the might be executed: and this of special chance and truth, she thought good to commit to Mr. Darcy, willing him to carry it to the Lord Chancellor, to have it under the Great Seal, but without charged him to keep it very secret, and not to make any acquainted with it. The very same day he learned it to the seal, and the next day after having received charge from her Majesty, by the Lord Admiral, that day should be made, if it was not sealed; but he declared it was sealed the day before, *On*, where the Queen replied, What needs that had? The next day after that, (which was, I think, on *Christmas Day*) my Lord Treasurer asked him, if he knew what the Queen had said towards the execution? He answered, To have so forward, and so showed it unto him, and also to the call of the Council, procuring then Warrant down to prison executed, the Queen

having

all, the fault is bad; and it is the worst, because by her saying what she said, she might gather what her intent was. Mr. Danyel's fault, he excused by saying that the Commissioners, which a man might have thought would be to excuse, but it results in a Contempt, and a Contempt is a Contempt, and yet is not every Allegiance a Contempt? If a man do a thing without a warrant, it is a Contempt, and he is concluded to do a great offence worthy the punishment inflicted upon him: and I would.

After him spake the Master of the Rolls, agreeing with the contents of them that have before; and that Mr. Danyel's great fault made him forget his duty: also saying, that the point did not, whether he did know it was his Majesty's pleasure it should be stayed, which, had he, appeared by his own confession, and therefore, in this, he agreed with the former confessions.

Now spake the *Justice Grey*, who said not very much, and yet spake somewhat: that he loved the man well, and yet had cause, saying, that he had no lack of good-will, but yet had grievously offended. So he subscribed in opinion to the former judgment.

After him spake the Lord *Laurey*, who divided the offence into two parts. First, The neglect of his duty; and secondly, The breaking of his duty: saying further, that the Judges had told the law, and we must believe them, that it is within the compass of a Contempt. The matter, said he, is evident: for first, her unwillingness in the Parliament was a neglect of her duty, which he let slip. And further, in saying, that she was of that mind that surely she spake without the knowledge of the Court, which he said, for you ought to have told them how doubtful it was; yet, Sir, you took a worse course, that said a high manner by your positions, as it should seem, should be done without her privity. Why said he, what an abuse of the Commissioners was this? Surely a great abuse, and it was a fault against them, much more against her Majesty: this is one of the highest offences, by my words, (for to be sworn) that ever subject did against the Prince; and thus you were my brother and her (before God I speak it), I think the punishment too little; yet with no offence to you, but for the quality of your fault. But, I say, had a greater fault been imputed upon him, I would easily have agreed therewith.

After him spake my Lord *Grey*, who said, I was pained with speech of the first, touching the Queen of *Scots*, and the next, Mr. Danyel's offence. For the first, said he, it is largely discussed: for the last, my good Lords, let me crave your further examination. His offence is made the more by divers circumstances; the first circumstance is, for that it was for execution of a Queen; but what Queen! Surely such a Queen as practised most horrible treasons against our sovereign Queen! such a Queen, as conspired the overthrow of the whole State! yet, such a Queen, that fought the subversion of Christ's true Religion, to bring our souls headlong to the devil! So then, my Lords, the taking away such a Queen, can no way aggravate her fault. The second circumstance is, her breach of decency, which he executed, that he told it to the chief Counsellors: whereas Mr. *Walsham*, my Lord Admiral and Lord Chancellor, either by secrecy, or commandment from her Majesty, did know it undoubted-

ly. Whenever my Lords before me have thought, his answer is the best; for if he say no, so I am relieved. For the third point, he asking what fault he had afterwards, he said it down without her privity, before him, is the full proof of the Contempt; here in the office, and the office, which he thought to acknowledge, yet with two confessions of the fault, the Justice remains with the Realm; the next, advertisements from friends, and beyond the seas. Now, my Lords, must not these considerations move him rather to put himself under her Majesty's mercy by dealing without her commandment, than to commit her Majesty to the mercy of her life by oblying her? For had that other thing happened which God forbid, that her Majesty would have tolerated, and then this Warrant signed and sealed had been found in Mr. Danyel's hands, meaning nothing but execution, should we not then have judged him a traitor? Should we not have torn and rent him away? Surely, my Lords, I should have thought him more worthy of ten thousand deaths, than now of the least punishment that may be inflicted upon him; for each of us, in preservation of our Country, ought to love our lands, our livings, and ourselves our bodies; howbeit, I excuse not his offence, neither do I agree it is a Contempt, and I agree with the punishment; and yet I think his fault proceeded from a very good and to be pardoned his Country; and I pray God, that that peculiar ornament of pity and compassion wherewith her Majesty is singular, may be extended towards him, that all his offences, be he a simple man, may neglect of his own private will, that all his offences, be he a simple man, may neglect of his own private will, that all his offences, be he a simple man, may neglect of his own private will.

After him spake the Earl of *Essex*, who, for his opinion, I thought it was but negligently done, and not contemptuously; but had it been done in contempt, he would have then thought fair and imprisonment no sufficient punishment for an offence of that quality; yet the Office being as it is, for company, said he, I agree to the Fine; but in mine opinion it is too much, seeing that I know her Majesty is merciful: and for the self, I agree with my Lord *Grey*.

The Earl of *Cambridge* opposed the case, neither aggravating nor denying the offence; but briefly concluded, he agreed in opinion with his *Wife's* Advice.

And the Earl of *Windsor* said nothing, saying that he was of the same mind with Mr. Chancellor, that spake first.

After him spake the Archbishop of *York*, speaking, as he was, like a Bishop, rather than a Judge, to declare a matter which concerneth the State, for he inveighed against Mr. Danyel's offence by places of Scripture: Obedience, said he, is the only virtue, and Disobedience the contrary; and God requeth nothing else but obedience. So Paul said, Let every soul be subject unto the higher powers, &c. And when *John* was reported Ruler over *Israel*, the People said, They would also do as all things. If then they ought to be subject, be he a simple man, much more in these things which he said. So first, said he, for Mr. *Chancellor*, for he did it neither willingly nor unwillingly, as I think certainly, but of a good mind to cut off our common enemy: that it was a good deed, must needs be confessed; but that it was not well done, must needs be granted.

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and therefore no presumption in him; and in his own judgment, he had sufficient warrant so to do by the first delivery of it from the Queen herself. Then considering the troublesome rumours that were then abroad, and that information came daily from *London* and *Windsor* of forces of people in arms, and the report scattered about that *Antony* and *Cybil* was broken, the prisoners gone, that *London* was fired, and her Majesty made away, amongst these rumours what should I do? Did I not dare which I might not and good subject would do in such a case? Further, it is not custom in court that particulars should trouble her Majesty in the execution of any such bills, but when the high judges, by her Royal effort, warrant, authority and life to it, the rest for the manner and means of execution is left to the Council; and for all other circumstances of time, when, if place, where, of persons, by whom; especially in this case when her Majesty had said expressly that the would not be troubled any more with it. Thirdly, for the not imparting of it to her upon her communication with him, &c. I had it by me six or six weeks before I spake any thing more of it, and was very unwilling to trouble her any more with it, especially remembering her words.

This was the effect of his defence, not uttered continuously, as I have set it down, but interposed by the particulars as they were objected, in much more largely large and choice terms; but I think that I have not left out any thing of weight. After this, the Commissioners began to speak judiciously unto the matter, whose Speeches I will by way of abridgement now, where any thing was spoken different from others, and especially notable, for most of them had the same beginning of the *South* Queen's demerits, &c.

The first then spake was Mr. *Walter Willmory*.

He handled eloquently the great causes the Queen had to deal severely with the *S. Queen*, and the importance of the Parliament thereon, and her Majesty's patience in following, her wisdom in being willing, her natural and accessible clemency in being slow; and compared her slackness with Mr. Danyel's fault, that he knew her mind therein very well. Then he shewed, that such things might not in any style be executed from Princes, and that perfumery and excuses at the uttermost that subjects can offer, for the Prince's Heart is in God's hand to dispose of. As for the Council, it is known that no Prince's Counsellors are father made privity to any thing, than that it pleases the Prince, and afterwards that is imputed to see that is conceived from another with great cause, and therefore you should not presume further than you had express leave, much less to have them an encouragement to the suit to proceed therein upon your own opinion, howsoever your desire was for the end good and honest, especially seeing these hath not been the like example, but he concluded that the punishment should not be in regard to the man's ability, but to the quantity of the Crime committed, (his judgment) ten thousand marks, and imprisonment during her Majesty's pleasure. To which all after agreed.

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2. Sir Roger Mordaunt, Lord Chief-Baron.

The second, seated at large the *South* Queen's perpetual evil mind to our Queen, to bereave her of her Crown as her husband, as her usurper, the Arms and State of England in possession, when she was first (out of the shell) married unto *France*, her debasing of it in her Widowhood, by laying the fault upon her late husband, and yet then seeking to be proclaimed His spouse in the life of her chief father, for the never call of her dear father, which was a dangerous step to her marriage, for he did in her second marriage, his bloodiness in continuing to her husband's murder, and upon that, flight and deprivation of her protection here by our Queen not only in life, but in honour; yet her alienation to the purposes of the Duke of *North*, and yet after that, tho' then our Queen would not suffer her for that to be touched, not any way defamed, as many would have had her, not only agreeing to treasonous plots, but also completing with them, and therein going beyond them all, so as we could never be in quiet, but we had a *Shoreville*, and then an *Edwin*, then a *Flora*, then a *Perry*, and now lately *Abigail* and *Robert*; her Majesty at length was forced to use a little severity with her accustomed mercy, and one ounce of use with ten of the other. For even in this proceeding against her, she might have been by the Senate of *Edward III.* by a Jury of *Esquires* and *Gentlemen*, attainted and burned, and her blood corrupt; yet her Majesty did chide by a new and so deal more honourably with her. Then he came to this fall of Mr. Danyel's, which he implied by the central reason of her Majesty's mind in all this, proceeding as the other did before, the thing he took to be *Misprision* and Contempt in our Law, punishable by Fine and Imprisonment; and he said, that *Misprision* and Contempt is to do any thing contrary to, or before the Prince's commandment, or the good of the State, in other things; as *Justices of Itinerary* to sit out of Term, to sit in bad courts, or *Knights*, and so he gave their examples, as in the Masters of the Law, viz. *Sheriffs* to execute their office, as *Barons* Knights to the Parliament without their Oaths. So this thing they bring a high point of Justice, was not in any respect to be done otherwise than her Majesty's express commandment would bear, especially not with such haste, when she expressly declared her mind to the contrary; wherein Mr. Danyel may seem by this fault, if her Majesty had any other purpose, to have persecuted her, and God might otherwise have turned her mind; for it is not lawful to be of suspicion in her Majesty in respect of that, as in the execution of the Duke of *North*, day to day was reported, and often her Majesty declared her same danger to be and intended to have put him so death, if otherwise the law might have been finally. The commandment to impart it to the *Prince* *Edward* in especially, was an exhortation to the suit against him, and finally, what he said my Lord *Tanner* could not be gathered of her Majesty's words, but rather the contrary; and the instrument was not in preceptory and irreversible as he took it, nor a sufficient Warrant for any kind of proceeding against the *S. Queen*, neither for the officers, nor for any other: for the last statute, besides the condition and prohibition, doth require the Queen's direction.

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Therefore, as it was said, that his Majesty imports not each part of irreconcilable enmity, as a capital, so then his offence was a disobedience, and a great one. If it was in excise, I think, a good intention, but that excise was not built for absolute of *metu quam* *servituti*. And St. Paul said, *Nemo enim potest suum dominum diligere, et non se ipsum*. Therefore, said he, the offence was not so dangerous as for, in such a case, one would be twice advised, to be wise either herself or wife. Lady of all, he concluded he agreed with his Majesty's Council, and he ended his sermon.

Then, first, he said, to the Council. That the matter had been opened in the Council, the danger of the *Swiss* Queen, whom he thought, living, and dead, as ordained to disturb and trouble the State of England. This concerning Mr. Davison's offence, Albeit, said he, that which is done could be as well as otherwise done, yet now I hope would with a wisdom, whatsoever to say, in my opinion, said he, he did it in the superabundant zeal of Religion unto his Majesty, and here to the Commonwealth. These be great arguments, said he, yet not enough: for *non est factum officium*; altho' the act were good, yet can I not excuse him in the circumstance, however, said he, the mercy in the Prince in deferring it was great; for there was some mercy, as well as a merciful severity: for it is written, *Hisque diebus regis deus, per sua misericordia* for ever. Yet, said he, mercy as a Prince is not to be restrained; and therefore, because the example may be dangerous hereafter, that Council may presume to do without the commandment of the Prince, which is a mischief more intolerable than an inconvenience; therefore I agree to that punishment which is herein agreed.

Left of all spoke *Mr. Prynne*, Chief Justice, who threw the Case, and said further, That to every Contempt a commandment was not necessary, which by my opinion was needed to be proved, for, said he, the Bishop of *Worcester* came to the Parliament, and afterwards departed without licence, and therefore had a grievance. I sit upon him, Myself, said he, as a Justice of the King's Bench, in the Term we hear of matters of Treason, by the reason of our office; and out of the Term, by Commission of Oyer and Terminer also with others: at, said he, a Commission should be directed unto me and others of Oyer and Terminer for a matter of Treason, and we should assign the Prison, and assign him to die, yet would I not

and that must be subject general, that all men may do it, which is not here so particular, who, or by what means. Neither is there here any such, especially his Majesty having no knowledge of the thing done. Further, he was the Queen's prisoner, and therefore no man might presume to take her away, or deliver her without special licence from the Queen; and finally, he showed, that the good intent was no warrant to transgress duty, whosoever he put a case of two, as where Judgment of death is given against one, and the Sheriff, for that he is a notorious thief or traitor, will hang him presently, before the Justice depart out of town.

3. Lord Audley.

He noted a difference in law between *Misprison* and Contempt, that one was larger than the other, and both in point of Justice, and might be when the Warrant of a Justice, or a Commissioner's Letter in such matters is not directly and finally observed; and urged, that a Secretary should be secret, and that it was his duty to have an express commandment.

4. Sir Gilbert Gerrard, Master of the Rolls.

He handled the same matter that before is spoken by others, but somewhat otherwise.

5. Sir John de Croft.

He showed his mind indifferently, with protestations of his good-will and good opinion of the man; that it was a rare example, and commended, as he thought, for want of Experience more than for want of duty.

He was somewhat sharp. Such Commissioners of execution are sent to Sheriffs, you, no Sheriff, ought to be very particular for such great persons; you had no more Commission than I, &c. and of likelihood you have hereby prevented other good purposes, which God might have put into her Majesty's mind, and herein you have led to many grave Counsellors, &c. If you were my brother, I would thank ten times to much to be little enough, &c.

7. Lord Gray.

He proposed very vehemently the great exigence the good Gentleman was in at that time: My good Lord, he said, comfort, quiet, &c. and call to mind in what case we were in, there came advertisements at first from our Province in *France*, in *Italy*, advertisements from abroad, from our Province at home, even within fifteen miles of this City, of rising, setting, breaking up holders, yea of the rebellion of his Majesty's Royal Person; if otherwise than well had come to her Majesty's Royal Person, which of us would not have run to him, and torn him with our hands? My Lords, why should Davison be more zealous and forward for his Prince than we? After he replied to that of my Lord Chief Baron, that the offence of *St. Francis* *Devison* did not exclude the rell, as he perceived, but rather implied and presupposed that the rell should know it, for without this explicit information, he being sick in his house, and so absent from the Court, could not in any day time have knowledge of it. After he agreed to the Punishment, but wished that her Majesty should have compassion on him to encourage others that were zealous to deserve well of her and the State, and to be ended. *Palapso* *facimus* *ultima* *maurice* *erat*.

* *Periphrasis* thus excited himself in an apologetic Discourse of his to *Malapropos*. The Queen, says he, after the departure of the French and Spanish Ambassadors, of her own motion, commanded me to deliver her the Warrant for executing the sentence against the Queen of Scots. When I had delivered it, the first I readily with his own hand, when he had to do so, he commanded it to be held with the Great Seal of England; and in saying thus, he said, Go to my office, who is now sick, altho' I fear he will die for sorrow when he hears it. The second said the reason of my delivering it so long, namely, that he might have been violently or unadvisedly drawn thereby, whereas in the mean time he was not ignorant how necessary it was. Moreover, the French Queen and Mary, that they had not refused her of this care, and wished that *Malapropos* could tell their public touching this matter. The next day after it was under the Great Seal, he commanded me, by *Malapropos*, that it should be kept in his house, and when I had returned her that it was done, she sent him back with such good words, that he was joyful, and so forth. Another said, that he might be better; and when I had returned her that it was done, she sent him back with such good words, that he was joyful, and so forth. Another said, that he might be better; and when I had returned her that it was done, she sent him back with such good words, that he was joyful, and so forth.

put him to execution; and yet the Commission is so hard and determinate. Surely, I think you meant well, and it was honest, but not so. Finally, he agreed the punishment should be as it was full of all deliberation. But further, said he, I must tell you, that forasmuch as the fault is yours, it declares her Majesty's clemency, and not privity in this action, and that she is offended therewithal. Further, my Lords, I must signify unto you from her Majesty, that forasmuch as the Lords of the Council were asked by Mr. Davison's request, in telling them the way pleased, and that which they did was for her safety, upon his wrong information, the Lords be fortioribus because they were asked by him; therefore her Majesty imports no fault to any of the Counsellors, but only to him, and the rest the double dishonour of all blame.

This field, Mr. Davison craved leave to demand one question, and make one petition.

For your question, said *Mr. Prynne*, I think it was never the order in this Court, after the matter is heard judicially, to answer any question, (which Sir *Walter Ashley* affirmed) but for your petition you may speak.

Truly, my Lords, said Davison, any question shall be forth as in your own conscience shall seem reasonable.

Whereas they neither gave him leave nor denied him.

Whereupon Davison said, If this Warrant, being signed and sealed, and left with me, and wanting nothing but execution, it should have furnished her Majesty should have miscarried, whether then—

Nay, said *Mr. Prynne* and *Mr. Prynne*, now you enter into that which is difficult already: yea, said *Mr. Prynne*, that question was moved by my Lord Gray.

Well then, said Davison, I will not seek for pretence enlargement of my liberty, nor rebuke of my imprisonment, altho' any body be not well able to endure it; only let your Honours hear me, I beseech you, of all liberality of discharge, and be moderate for me, that I remain not in her Majesty's displeasure and disgrace: for I protest I shall be contented with any condition and state of life whatsoever, if I may have her Majesty's favour.

Whereunto the Lords universally answered, he spoke like a good subject. And so the Court rose.*

2. Earl of Lincoln said little to the purpose.

3. Earl of Arundel said very little.

4. Earl of Devonshire said very little, and so before.

11. Archbishop of York discussed theologically of the necessity and worthiness of the virtue of Obedience, even bodily to Princes in all things; and that as *sanctum* *matrem* *in* *inde* *omni* *tempore*, adding the difference between *honor* and *honor*, (as before my Lord Chief Justice of *palapso* and *palapso*, which I forgot also to relate) and good intents do not make the fault excusable, and that he ought to have direct, explicit, and intimated command, whereas he cited a Rule out of Civil Law, (wherein he said he was to find and converse) to this purpose, If the Prince commanded *aliquid* *magnum* *de* *honore*, *ita* *si* *parvum*, *si* *de* *honore* *magnum*: he concluded, he did agree to the punishment, but was sorry that Mr. Davison, of whom he had heard so well, should fall into this case, he could not help it, a wider man might have been led with zeal, and none of us would have it undone.

12. Archbishop of Canterbury, having said forth somewhat of her who troubled as all both alive and dead, and theologically of *superioribus* *potestas*, as out of the *Psalm*, where God plagues the enemy of his Church, for his mercy endureth for ever; for this greatest matter, he said, *as* *sanctum* *matrem* *in* *inde* *omni* *tempore* was in question, a thing done, as he thought, unadvisedly of zeal, and that which might have been better done in consideration of her Majesty's purpose to forbear her death, which could not be unknown to Mr. Davison, for such things are by no means to be verified from Princes, God will certainly move their hearts, and when it shall be most for his glory. This example, he said, might be dangerous and inconvenient hereafter; and therefore he concluded it rather a mischief than an inconvenience, and so agreed to the punishment.

13. *Mr. Prynne*, Lord Chief Justice. He, as Chief, concluded the matter, and pronounced Judgment judicially upon the grounds alleged before of others, which he refuted, &c. And after, as from her Majesty, spoke somewhat to justify her proceedings in all these matters, and to declare that he did not for this impose any fault to her Council, for that they were misled by this man's undue suggestions.

Mr. Davison submitted himself to the Judgment of the Queen's mercy, and requested that he might propose a question, which he took upon his credit to be such as they would not dislike, and therefore he had leave and a request. His question was, If this being in my hands, her Majesty had miscarried, what should have become of me? To this, Sir *Walter Ashley* and my Lord Chief Baron answered, that my Lord Gray had asked it already. His request was not for mitigation of his fine, or for enlargement of prison, altho' he could answer all his life were here in than now; much less for his former offence: but only that he might, with her Majesty's favour, enjoy any condition whatsoever, requesting them to be intercession for that. Nothing to this was said, but they arose and departed.

* These I am sure are the principal matters by any of them uttered, so far as by myself, or by my conference I could recall to mind.

Ex *Autographo* Gulielmi Nuzii, qui scripsit testis fuit.

VI Proceedings in Parliament against John Earl of Gowrie, Alexander Ruthven his Brother, Henry Ruthven, Hugh Mencrief, and Peter Exiot, for High-Treason, Nov. 15, 1600, at Edinburgh.

WILLIAM, Earl of Gowrie, having been condemn'd at Stirling, and executed at the year 1584, with two others, for felonious practices, in forcing the King's Person at Redbow-House, in his minority, and basiliating from him all others who were not of their party, making him condemn'd to what they propos'd, and levying forces to secure themselves and the King's Person in their custody; occasion'd the Clergy of that party, both to preach and publish scandalous pamphlets against the King and Government; this did breed a most friendship between young Gowrie and the faithful Clergy. Albeit, the King did, with great benignity, restore the Earl of Gowrie to his Father's house and estate; yet, his two sons, the Earl, and Mr. Alexander, were raised up in such malice against the King, by force of his religion, but especially by the Clergy, that neither the King's favouring him by his Estate and Honour, confiding in other means of favour, and trust on him, (and placing his Sister as the first Lady of Honour to the Queen, and making his Brother Alexander one of his Bed-chamber) could ally his revenge a nil at all, he resolv'd to bring his long-design'd purpose to effect. For, in August 1600, he desir'd and contriv'd the bringing the King from Folland to his house in Perth; and there, with his fellow-conspirators, to have murdered the King.

On account of this Treason, and several lifelines, a Parliament was adjourn'd to Edinburgh on the fifth of November that year 1600, albeit the printed Acts bear its meeting to be on the 15th.

Accordingly a Parliament was adjourn'd, to be held at Edinburgh on the 15th of November 1600, and [as is already] it was adjourn'd to the 4th of November. On which day, Sir Thomas Hume, the King's Advocate, produced a summons of Treason duly executed against William Ruthven, Brother and apparent Heir to John Earl of Gowrie, and Mr. Alexander Ruthven; calling also, in the summons, the tutors and curators of the said William, (if he had any) and all others, having pretence to interest in the matter, to hear it found; and declared, that the said Earl of Gowrie, and Mr. Alexander his Brother, had committed Treason, in attempting to bereave his Majesty of his Life, at St. Johnstone, on the 3rd day of August last past. The summons and executions being read, and the Heralds and Messengers sworn to the veracity of the executions, both at their private houses, mercat-crosses, and Shire and Peer of Loth, &c. (which are the most publick monuments and Citations that can be given by the Law of Scotland); which Citations were given on the 28th day of August and 10th dates, in their respective places and mercat-crosses, and the Parliament was declar'd current daily.

On the 9th day, the said summons and executions were read over again, another summons of treason was produc'd, with their executions and verifications, made on each side in the face of the Court, against Alexander and Henry Ruthven, sons to Alexander Ruthven of Friesland, and against Hugh Mencrief, brother to William Mencrief of that ilk; Patrick Exiot, brother to Colin Exiot of Balmorie; to hear and see themselves condemn'd, as guilty of High-Treason, and Life-Majesty, against the King at Perth, the 5th day of August last past.

And likewise by warrant from the Parliament, one Andrew Henderley, who was prisoner in the Tolbooth of Edinburgh, on accusation for the said crime, was brought by the Bailie of Edinburgh, and held before the Parliament; he having receiv'd formal summons in the Tolbooth, on the 28th of August last past.

The summons being three called, the executions all verified, and none of the parties dissenting, excepting Andrew Henderley the prisoner; the King's Advocate did take instruments: and likewise the King's Advocate did then, and there, produce before the Lords, our foreveng Lord's letters of relaxation, given under his Highness's signet at Edinburgh,

relaxing all the persons so feloniously from the horn, and from all the summons created against them, at the sentence of whatsoever persons; that is, they might have mercy and freedom to compare; and which relaxations were dispens'd, at the mercat-crosses of the Burgh where each person had his abode, and also at the mercat-cross at Edinburgh, and Shire and peer of Loth. And their executions and relaxations were registr'd in the records of the Burgh where the accused did reside: on which productions the King's Advocate did take instruments.

The Lords Commissioners in Parliament did remit the said Andrew Henderley to the Toth both for false callopy, and the Parliament adjourn'd until the 15th day of November; on which day, the Parliament having met, the said Sir Thomas Hume, Advocate, produc'd the said summons of Treason and Executions, and the Heralds and Messengers bearing, of two, verified the executions upon both normally, &c. neither William, nor none for him, nor the others cited, comparing the King's Advocate did take instruments thereon: only Mr. Thomas Henderley, one of the Commissioners of Edinburgh, compar'd for the forefaid Andrew Henderley, and produc'd the writ following, underscrib'd by the King's Advocate. "It is our will, and we command you, that upon sight hereof, ye deliver Andrew Henderley, Chamberlain to unquahie John Earl of Gowrie, his name first of the summons of Treason and Executions, raised and executed against him, for being at, pier, redd, counil, and counsell, of the late Treason conspired by the said unquahie Earl, his unquahie brother, and complice, against our Person; and as you will be answer to us hereupon; keeping that present for your warrant. Subscribed with our hand at Holyrood-house, the ninth of November, 1600. Sir Johnskinner, James R.R." Consistat whereupon, the Advocate "did delete his Name."

The Heralds and Messengers did, at that first time, again verify upon both the executions given in; and the relaxations and executions against William, and Alexander, and Henry Ruthven, Patrick Exiot, and Hugh Mencrief; and the Parliament found the Delict relevant, and then adjourn'd till the 15th day of November, and committed the examination of the witnesses to the Lords of Articles, which are a Committee of Parliament, according to the constant practice and custom in Parliament.

As to the Lords of the Articles in that Parliament, were two Bishops and four Abbots, all men of great worth and integrity; four Earls, viz. Lennox, Perth, Marischall, and Albany; four Lords, viz. Glen, Lincolne, Newcastle, and Fife; seven Barons, and nine Commissioners of Burghs.

On the 15th of November, the Parliament did again meet, and the Advocate did again call the summons of Treason against all the forementioned Persons (except Henderley), for conspiring the slaughter of the King, on the 5th of August last past. Being all three called, and none comparing, the said Estates did find both the summons, reasons and causes therein mentioned, relevant; and therefore admitted the same to the Advocate's production. Wherupon the Advocate did produce the Letters of homing duly executed and enrolled, against Alexander and Henry Ruthven, Hugh Mencrief, and Peter Exiot; hearing, that they were shew'd to the Scales, and put to the horn, for crimes of Treason therein mentioned.

And the oaths and depositions of the witnesses, list and adduc'd by the Advocate, for proving of the Treason against the delictors (taken before the Lords of Articles), viz. the deposition of unquahie Mr. Thomas Crossin, and George Graygowl, when they were call'd to death, for the forefaid crime of Treason; and likewise, the Advocate repeat'd the solemnity, with the circumstances of the matter of fact, to prove the points of the Label; and produc'd the depositions of all the witnesses, which were all, as follows:

The Depositions of the Witnesses, examined in presence of the Lords of Articles, for proving of the said two Summons of Treason.

[Note, That the Words not printed as they were then written and spoke, for exactness sake.]

THE Duke of Lenox, sworn and examined, deposes, That upon the 5th day of August last past, this Depositor, for the time being in Folland, in company with his Majesty, the Earl Mr. Alexander Ruthven, in speaking with his Grace before the tables, between six and seven in the morning, and shortly thereafter, his Majesty calling to the hearing of the Buck, and having him one in the Park of Folland, his Highness spake to the Depositor, desiring him to accompany his Majesty to Perth, to speak to the Earl of Gowrie. And immediately thereafter, this Depositor sent his servant for another horse, and for a sword, and bag on, and followed his Grace: and at this Depositor outtook his Grace, Mr. Alexander Ruthven was speaking with his Majesty; and shortly after the Depositor's coming to the King, his Highness rode a-part, and spoke with this Depositor, saying, Ye cannot guess, man, what errand I am riding for; I am going to get a poise in Perth, and Mr. Alexander Ruthven has informed me, that he has found a man, that has a pickard full of crown'd Gold, of great worth. And in the mean time, his Highness enquired of this Depositor, of what humour he thought Mr. Alexander to be of? Who answered, that he knew

nothing of him, but as of an honest discreet Gentleman. And after that his Highness had declar'd to this Depositor, the said circumstances of the man who had the Gold Gold, the place where it was found, and where it was kept; this Depositor answered, I like not that, Sir, for that is not lawful. And they riding beside the bridge of Errol, his Majesty call'd to the Depositor, that Mr. Alexander desired him to keep that matter of the poise secret, and take nobody with him, and then his Highness both at that time, and thereafter at St. Johnstone, within the Earl of Gowrie's hall, said to this Depositor, Take note where I put with Mr. Alexander Ruthven, and follow me. And as his Majesty was within a mile to Perth, after that Mr. Alexander had come a certain space with his Highness, he rode away and call'd to Perth, before the rest of the company, towards his brother's lodging, of purpose (as the Depositor believes), to advertise the Earl of Gowrie of his Majesty's coming there. And as his Majesty was within two paces of butt-lings to the town of Perth, the Earl of Gowrie, accompanied with divers persons, all on foot, met his Highness in the face, and saluted him; and immediately thereafter, his Majesty

* Extracted from the authentick Records, and the principal Vouchers (which lie in publick custody in the Parliament-House, at Edinburgh), by George, Earl of Gornock, Keeper of the Records, 20th. Dec. 16.

† See Sir James's History of the Church of Scotland, p. 413, 457, 479, 480.

‡ N. B. The Summons and Executions are at full length recorded in the Books of Parliament; and being all read in the Parry required by Law, it would not only be tedious, but utterly, to repeat them here; they being judic'd in the Records.

ANDREW N. HARRISON

THE Abbot of *Insheshafray*, sworn and examined, deposes, That, upon the 5th day of *August* last *happo*, this Deponent being in *Falkland*, about seven hours in the morning, he met *M^r. Alexander Rabban* accompanied with *Andrew Rabban*, and, at that time, only *Elizabet* the said *M^r. Alexander Rabban*, without any conference either with him, or at that time, in the said *M^r. Alexander Rabban*, came once with his Majesty, whose intent was to destroy the *hedges* and the park: which conference lasting for the space of a quarter of an hour, and the said *M^r. Alexander* accompanied his Majesty while they came to the *Meadow*, and, as he returned from his Majesty, the Deponent desired *M^r. Alexander* to depute with him, by reason his own could not be in good prepared. To whom *M^r. Alexander* answered, He might not tarry, by reason his Majesty had commanded him to await upon him: And, as the Deponent pulled to *Falkland*, leaving *M^r. Alexander* behind him, met his horse with his man, coming from *Falkland* to him; and then this Deponent, after he had departed in *Falkland*, he took his journey the high-way to *Indalshay*, and

[illegible]

For information,
[ADDRESS]

The *Abbot of Glastonbury*, taken and examined, deposes, concerning to the said Duke of *Gloucester*, in all things, as follows: That after dinner, when word was of his Majesty's departure towards *Wiltshire*, and that there had all together come down to the Porter, and had inquired at him, Of the King's Majesty was gone forth, the Porter answered, He was not pulled forth, and the Earl of *Gloucester* affirmed, That he was pulled forth at the back-gate, and the Porter said to the Earl of *Gloucester*, That cannot be, my Lord, because I have the key of the back-gate. And, after that his Majesty had come forth at his window of the round, *Tristram* attended on him, this Duke then *James* desired him to lay hands on the Duke of *Gloucester*, and he laid hands on him, and he seized him, and gripped the Earl of *Gloucester*, saying, I fear I raise in thy death, thou traitor die. Then the Earl of *Gloucester* answered, I know nothing of the matter. Then suddenly the Earl of *Gloucester*'s men, togged the said Sir *Thomas Erskine* and *James* *Arden* from the Earl of *Gloucester*'s company who immediately ran the space of half an hour, but from thence, towards *Gloucester*'s house, and drew thence by two fowls, and cried, I will either be at my own house, or die by the gate. And immediately thereafter the said Earl, accompanied with thirty persons, so shortly, passed by the said place, that the Earl of *Gloucester* might for the time, and shortly after, the Duke was so appeared to have far a multitude of people carrying a yell towards the place.

Sie schreibe,
LUDWIG.

SIR THOMAS CRAIG, of the age of thirty-five years, stout, appears conformable to the Lord *Indefatigable*, and Lord of *Indefatigable*, *Indefatigable*. That immediately after the Dependent heard his Majesty cry forth of the window of the tower, "Sir, help! I am betrayed; they are murdering me!" he ran with diligence towards the place, to have helped his Majesty, and, before his entry, seeing the Earl of *Genarois*, this Dependent and his brother grappled here by the neck, and fast to him, "Traitor, this is thy deed. While Earl answered, What is the matter? I know nothing. Immediately this Earl's servants loved him from this Dependent and his brother. And this Dependent entered within the cloie, he fought with Sir Hugh *Monny*, who demanded of the Dependent what the matter meant; and, in the mean time, the Dependent heard Sir John *Rampy* saying out at the turnpike-hill, "Sir, Sir Thomas, come up the turnpike, even to the head!" And, so this Dependent had called up two flops of the turnpike, he sees and meets Mr. *Abraham*, *Eschew* himself, in two parts of his body, with his face and his back to the Dependent, the Earl of *Genarois*, Sir Hugh *Monny*, and others that were with him, "Sir, this is the traitor, strike him!" And immediately he was flicken h. them, and kill, and as he was fallen, he turned his face, and cried, "Alas! I had not the wits of it, this Dependent being standing above him in the turnpike." Thereafter, this Dependent laid his head of the turnpike, and rose up within the chamber at the head of the gallery, where Sir King and Sir John *Rampy* were there also present; and, at the first meeting, the Dependent said to his Majesty, I thought your Majesty would have considered me, for me, not to have commanded me to await your Majesty at the court, for my thought is not meet to have taken men with you. Whereupon his Majesty answered to this Dependent, "Alas! the traitor damned me in that, which did in the leaves, for I commanded him to await my Majesty, with me, with his Majesty, and me to do as he said, and he said, I thought to have done so, but did not; he did not drink the do. Shortly after this, Sir Hugh *Monny* followed the Dependent into the chamber, and George *Wylly*, I went to *James* *Smith*, and immediately thereafter Mr. *Thomas* *Craig*, with his sword drawn in his hand, entered within the said chamber, and the Earl of *Genarois* followed him with in the said chamber, with one sword drawn in every one of his hands, and are knifed upon his hand, who struck at the Dependent and his colleague on certain space. Likewise, they d-fended them and broke again; and that same time, this Dependent was hurt in the right hand by Mr. *Thomas* *Craig*, and, and this Dependent heard my Lord of *Genarois* speak some words at his entry, but understood them not. At last, Sir John *Rampy* gave the Earl of *Genarois* a sword break; and then the Earl of *Genarois* and the Dependent were both taken up, and he laid him up, whom he knew not, and how soon the Earl fell to the ground, Mr. *Thomas* *Craig*, and the remainder who accompanied him, departed his path down the turnpike. And the Dependent remained, the

together with my Lord, up the old turnpike & but what was done within the house and place thereunto, knows not, but by report: neither saw he any just brought to the place, by any of the town. And knows no more of the matter.

Sir Johnstone,
ROBERT CHRISTIE.

Alexander Blair, younger of Balloch, sworn and examined, deposes, conform to *interdiction perinde*; saying, That he saw not my Lord or *George* with his company, and drawn swords, up the turnpike, but saw *Alexander* and *Henry* *Ruthven*, and *Hugh* *Murray*, come down the said turnpike, where they and my Lord had ascended; the said three persons having drawn swords in their hands, but saw not *Patrick* *Exiot* there. And this Deponent says, that after the same was risen, and this Deponent pressing to enter within the place, he was a little flayed by them in the place, but they yielded at once, and the Deponent got entry. *Exiot* he saw a just brought from the tower, and set up at the wall of the close, but who brought the same in, he knows not.

Sir Johnstone,
ALEXANDER BLAIR,
Appointed of Balloch.

George Hay, part of *Clontarf*, of the age of twenty-eight years, or thereby, married, deposes, conform to the Lord Duke of *Lennox*, in all things after his Majesty's entry in *St. Johnstone*, they libelled, adding, that, some day, the Deponent having also in *St. Johnstone* with him, and speaking with him in his own place, he saw *Andrew* *Black* come in bound from *Falldene*, and heard the said Earl of *Lennox* enquire of the said *Andrew*, who was with his Majesty in *Falldene*. And thereafter, the said Earl took the said *Andrew* *Black* into the castle, and, after a certain space, the Earl coming to the chamber, he gave this Deponent his dispatch, saying, That he had to do that day, and might not wait of his errand, and bade him come another day.

Sir Johnstone,
GEORGE HAY.

Mr. Peter Hay, of the age of thirty years, or thereby, married, deposes, conform to *George Hay* in all things, the Witness immediately preceding.

Sir Johnstone,
PETER HAY.

Robert Graham of *Thurlock*, sworn and examined, deposes, conform to the Duke of *Lennox*, after that his Majesty entered in *Perth*.

Sir Johnstone,
ROBERT GRAHAM.

Oliver Young, Bailiff in *Perth*, sworn and examined, deposes, That the day libelled, this Deponent was in the Earl of *Lennox*'s lodging, where he saw the King there; and after dinner, saw the King's Majesty and *Mr. Alexander* *Ruthven* pass their allies through the hall, and up the turnpike, and immediately thereafter, this Deponent passed to his own lodging in the town, where he abode while the cry and tumult rife; and in continuance, this Deponent running to the place whereto his Majesty cried out at the window, and commanded this Deponent, by name, to fly the tumult of the People: the which this Deponent obeyed and did; and saw *Hugh* *Murray* coming forth of the place; but his face being bloody, and *Henry* *Ruthven*, one of the defenders, at the mouth of the Water-gate, with a drawn sword in his hand; and knows no more in the matter.

Sir Johnstone,
OLIVER YOUNG.

James Drummond of *Piscarrie*, sworn and examined, deposes, *interdiction perinde* in eximia; adding, that as the Deponent immediately after the cry rife, running to the place libelled, he saw upon the high-street *Alexander* *Ruthven* one of the defenders, having a drawn sword in his hand, and crying fire and powder! And he knows no more of the matter.

Sir Johnstone,
JAMES DRUMMOND.

William Rynd, Bachelor in *St. Johnstone*, of the age of thirty years, or thereby, married, deposes, That he saw within the close of *Perth*, after they rife, *Patrick* *Exiot* and *Hugh* *Murray*, both bloody, having drawn swords in their hands.

Sir Johnstone,
WILLIAM RYND.

Thomas burgh of *Perth*, sworn and examined, deposes, conform to *James Drummond* and *William Rynd*; but he saw not *Patrick* *Exiot* there.

Sir Johnstone,
THOMAS.

George Wilson, servant to *James* *Exiot*, of the age of twenty-four years, or thereby, married, deposes, conform to *Sir Thomas* *Exiot* in all things; by reason this Deponent was in company with the said *Sir Thomas*, after the first time, that he saw *James* *Exiot* his brother had gripped the Earl of *Lennox*, and were followed from him by his servants; and immediately thereafter, this Deponent accompanied the said *Sir Thomas* *Exiot* up to the turnpike, into the chamber where his Majesty was, where he was, as the said *Sir Thomas* has deposed, in all things.

Sir Johnstone,
GEORGE WILSON.

David Boyd, father in *Perth*, sworn and examined, deposes, conform to *James Drummond*, and heard *Alexander* *Ruthven* cry fire and powder; but saw not *Patrick* *Exiot*.

Sir Johnstone,
DAVID BOYD.

The Sentence and Doom pronounced by the Lords and Estates of Parliament for High-Treason, against John Earl of Gowrie, and his Brother Mr. Alexander Ruthven.

To repeat the Libel and Executions, or the Libels verbatim, would be uselessly tedious to Readers; therefore I insert the Doom of Sentence verbatim, pronounced on the 15th Day of November 1600.]

THE Lords, Lords and Estates of Parliament find, deems and declares, that the said archbishop John Earl of Gowrie, and Mr. Alexander Ruthven his Brother, committed and did open and manifest Treason against our said Sovereign Lord, in all points, articles and matter

Gilbert Hutchins in *Perth*, of the age of twenty-four years, or thereby, married, deposes, conform to *James Drummond* in all things, and *David* *Boyd*.

Sir Johnstone,
GILBERT HUTCHINSON.

John Murray of *Arbury*, of the age of fifty-eight years, or thereby, married, deposes, the day libelled, this Deponent came to *St. Johnstone* after dinner, where he heard his Majesty crying forth of the window of the tower, *Perth*, Treason, my Lord of *Mor*, help! immediately thereafter, my Lord of *Mor* and the Duke ran to the broad turnpike, and the Deponent followed them in the close, where he saw the Lord of *Grey*, having one steel bonnet on his head, and two drawn swords, one in his hand; and saw the said Earl pass up the turnpike, accompanied with certain his servants, having drawn swords in their hands, or whom he knows none.

Sir Johnstone,
JOHN MURRAY.

Thomas Berrell, burgh of *Perth*, sworn and examined, deposes, conform to *James Drummond*, adding, That the time of the fray this Deponent entering within the close of the place, he saw standing in the close, with drawn swords in their hands, *Alexander* and *Henry* *Ruthven*, and *Hugh* *Murray* bleeding in his face; and at the same time, this Deponent felt Mr. *Thomas* *Grayson* come down the black turnpike, and he took forth of his hand his sword; and heard the said *Alexander* *Ruthven* cry for fire and powder; and saw not *Patrick* *Exiot* there.

Sir Johnstone,
THOMAS BERRELL.

Alexander Perrell, tailor in *Perth*, of the age of forty years, or thereby, married, deposes, the day libelled, he saw *George* *Crainche*, and *William* *Crainche* a laquer, standing in the yard with drawn swords.

Sir Johnstone,
ALEXANDER PERRELL.

William Robertson, sower in *Perth*, of the age of thirty-four years, or thereby, married, deposes, the day libelled, this Deponent being within the close of the place, he saw the Lord of *Grey* standing in the close, accompanied with seven or eight Persons, of whom he knew none; the said Earl then having one steel bonnet on his head, and one drawn sword in his hand; at the which sight this Deponent being afraid, pass forth of the place, and knows no more in the matter.

Sir Johnstone,
WILLIAM ROBERTSON.

Robert Colwell, servant to the King's Majesty, of the age of thirty years, deposes, conform to the Lord Duke of *Lennox* in all things, by reason this Deponent, all that Day, was in company with his Majesty; and after that his Majesty had cried out at the window, Treason! this Deponent followed the Duke and Earl of *Mor* up the turnpike, and deposes, as they have deposed.

Sir Johnstone,
ROBERT COLWELL.

Robert Brown, servant to his Majesty, deposes, conform immediately preceding in eximia, because this Deponent, the time libelled, accompanied with *John* *Murray* to fetch the hennens up to the gallery; and this Deponent passed up the little black turnpike, and at his first entry within the chamber, he saw the Earl of *Gowrie* lying dead; there being at that time in company with his Majesty, *Sir Thomas* *Exiot*, *Sir Hugh* *Murray*, *Sir John* *Rumley*, and *George* *Wilson*.

Sir Johnstone,
ROBERT BROWN.

John Bay, porter to his Majesty, sworn and examined, deposes, That he saw the King's Majesty and *Mr. Alexander* *Ruthven* pass through the hall, and saw that day, *George* *Crainche* with one drawn sword in his hand, accompanied with certain others; and, in others, deposes, conform to the Lord Duke and Earl of *Mor* in all things.

Sir Johnstone,
JAMES BAY.

John Bay, servant to his Majesty in the ale-cellar, sworn and examined, deposes, conform to *James* *Bay*.

Sir Johnstone,
JOHN BAY.

Alexander Pockis, burgh of *Perth*, of the age of thirty years, or thereby, married, deposes, the day libelled, this Deponent being within his own house beseeched the Earl of *Gowrie*'s lodging, how soon his mother heard the common bell rings, he locked the door, and held him in all the time; and saw at that time, the Earl of *Gowrie* come in at the gate with two drawn swords, one in his hand, and one laquer put one steel bonnet on his head; and, one certain space thereafter, the Deponent saw *Hugh* *Murray* come forth of the place with one bloody head, and *Patrick* *Exiot*'s man likewise bleeding; and also saw *Patrick* *Exiot* come forth of the hall, but remembers not if he had any sword in his hand; and saw also *Alexander* *Ruthven* come forth with one drawn sword in his hand.

Sir Johnstone,
ALEXANDER POKKIS.

contained in the said summons; and therefore it was given for dooms by the mouth of *David Lindsay* Demolish of Parliament, in manner and form as follows:

G

* This

1604, my Masters of the Jury, as the Earl of Salisbury is guilty of Treason, yea or nay for his confession of a great party of money which is treason, and I fear him, and that of itself is Treason.

Sir Christopher Blount answered, that he was now a man, with through remembrance of his duty, and through grief of his affliction, not himself, leave some matter; therefore desired not to be troubled by what he said, for he hoped the Lords had called him thither rather to confess his fault, than to accuse or defend them.

Mr. Attorney said, they must now proceed, and Sir Christopher or Blount is not now state in question, but as the Earl is concerned and interested in this cause, for order of proceeding, there was no man in the world but must be called by the names and by precedent, a thousand of by their all men said, then would it be proceed against him.

Sir Christopher Blount desired them to proceed against the others, for he would confess a fault had been done. But Mr. Attorney desired to be heard against him, as *per se* per contra *ad alios*. Now, to show this point of treason, the indictment contained the matters touching the Queen's person. In private cases, of course, shall come to their matters with small persons, this is a show of disobedience, and so forth to deducation.

To prove the point of treason, 8 Edw. VIII. the last words of *Restituta* an indictment against the Statute of *Levellers*, for the increasing of their treason. And all the Judges that advised this to be Treason.

Year, 12 Edw. the Premier in *Levellers* making a riot in *Southwark*, upon information made against them in the *Star Chamber*, some of them were sentenced to be whipped, some others were confined to life at *Banbury*, and some to whip the Mayor for suffering the *Prisoners* to be whipped. And in extending to life and make an execution, was resolved by all the Judges to be Treason.

19 Edw. *Broghda*, and others in *Cheshire*, rising to overthrow the laws, and to subvert the King, the King was at *Windsor*, the indictment was of Treason and confounding the Queen's death, and advised in law against the *Prisoners* of the Queen. Now, if the law be the conclusion of the subject mechanical men, who shall be thought of the acts of Law, and other things intended to serve the Queen, to take the *Corporation* themselves of the Court, to call a Parliament, to change Government, to alter Religion? These indictments of force must needs tend to Treason. The *Prisoners* of *London*, the men of *Cheshire*, were hanged, drawn and quartered.

The Chief Justice *Payton* delivered the reasons of all this to be, that by force to compel the *Prisoners* of any government, is in itself Treason.

The Attorney. He that conspires to take *London*, and to surprise the Court, this doth merely concern the State; but this *Conspiracy* company, to confound the Queen's health, this concerns more; but the objection of Religion, this of all things concerns most. I am from before her coming to the Crown, by Majesty having holden a constant profession of the Religion now established, and since her reign to blessed of God in it, and for her own, by compulsion or otherwise, to be drawn to change it, what impiety and sacrilege against God were it so think it? This quarrel for the changing of Religion, was the great cause of the Spanish invasion intended in 88, and the many massacres against the Queen's Person, by poisoning her gloves, the Poison of her husband, and many other ways; therefore at the request or compulsion at a subject to change this true profession of Religion, her Majesty would rather lose her Crown, and venture her Person itself in defence of the law, than ever suffer or endure it. Also previous to this to think: These things have flowed for precedents. Now we hear, for the Government of our own Kingdom, Queen *Jehol*, in the time of King *Edward VI.* the ablest great numbers, pretending for the good of the King and the Church, they was a glorious pretence; but his being upon the wings of her power, calling a Parliament in the name of the King, took the oversight of the King's Majesty's name; and upon that the catastrophe, the conclusion was the smothering of the King, and putting to death the Treasurer and Chancellor; but, said he, the lover of the law is such, as we are all gaitors, therefore to long as the King lives, we are all in danger. The Fury of *Richard III.* the Act of a *Henry IV.* calling a Parliament, putting the King in *Prison* and *Cage*, and the King's death following, are dangerous precedents, and too fitting these indications. This treason's head hath been long aching, like unto an Elephant's whip, long aching, but here in a hollow tree, and discovered before it was felled.

It was further said, that they were free, it would not be asked; if they were away, it would not be considered; therefore refused how should know it. And upon the sudden, even when the matter was to be asked, then all to have notice of it. And the tale of being to be murdered in his bed, or to be set upon by Sir *Walter Raleigh* going to the Lord-Treasurer's, this was a hurt, and to be feared by them to a hurt, but on the other side, it shall be proved directly, that they intended to kill Sir *Walter Raleigh*. It was objected, that the Queen's forces that would be suddenly raised would be a detriment to the service, but to prevent this, it was resolved to proceed that the *Prisoners* generally of Treason, because they knew not of the Treason made, that they were paid in the thought itself. For clearing of this, Mr. Attorney referred himself to the opinion of the Judges in the point, whereupon it was delivered by my Lord-Chief-Justice, *That in any case, one pretended Treason, and others committed, and offered him in any case, the pretence of the Treason intended, yet were they all offenders in Treason.*

And for the honour of the Indictment, and manifesting the due of their judgments, Mr. Attorney desired their judgments, whether in case, then were others, and others in such a matter, whether the law charged out in this point with *Walter Raleigh* against the Person of the Prince of Wales was advised by the Judges to be so, and the indictment must follow them.

Now, for several proof against every several person that was charged, he first began with Sir *Christopher Blount*, and with his own confession to the King. The conclusion of Sir *Christopher Blount* contained this,

That the 20th of January, he was sent for by the Earl of *Arden* to come up to *London*; whereupon he came, and was at *Drury-house* when the conference was there the Sunday or Monday evening before the going into *London*, but came when the conference was ended. The reason of their going into *London*, as they on Sunday the 8th of February, was, because the alarm was given at the Court, and knowing into what hazard the Earl was concerned, he went with him for safety of the Earl's life, as far as there might be power in him, and thought a lawful for subjects to use force for their safety, and the taking of a *Liberty*. And being asked by Mr. Attorney, whether he was prony to the purpose of taking the Court? And, as was prony to the convenience of going to take the Court, but was a thing felt to be consider of, but not to hold. And being further asked by the Secretary, if in their conference it was not resolved, that the Earl prevailed, and came to the authority he that at, he would have suffered Toleration of Religion? answered, that he thought so; and said, he should be to them to deny it; for the Earl had many times told him, that he liked not the being of men's conference; and in his usual talk would say, he wished that any should be troubled for their conference. And in a second conference, he set down, that the Earl, five days before his going into *London*, wrote down with his own hand certain articles to be discussed upon; without one say, whether they should take the *Prisoners* another, touching the *Parliament* of the Court? and that the Earl finally spoke of this purpose to alter the government of the Realm. But the Examiners said that might not have been set down, because it was no grace unto the rest.

Mr. Secretary desired to know the reason wherefore he would not have had this set down, which he understood to be, for that the conclusion was to liberal of matters to find, as this being added, it would embroil the rest?

But Sir *Christopher Blount* said, he was not without but the altering of the Government being moved, and the removing of the Secretary, he desired subsistence to express any further matter, for grieving of himself. And in the last conference, Sir *Christopher Blount* feared to displease from the attempt intended, but utterly disliked the taking of the Court at that time of the night.

For a farther proof against Sir *Christopher Blount*, that he had wrought with the Earl for a Toleration of Religion, and sought to seduce Sir *John Davies*, the confession of Sir *John Davies* was read, wherein it was set down, that Sir *John Davies* talking of Sir *Christopher Blount*, of the Earl had promised Toleration of Religion, the Catholic Religion? Sir *Christopher Blount* answered, that the Earl gave good hope of it. And *Davis* in his confession set down that personally by the petition of Sir *Christopher Blount*, he became a *Catholic*, therefore being taken and committed to Mr. *Montague*, he desired *Montague* to help him to a *Prison*. But Sir *John Davies* said, that many times he had conference with Sir *Christopher Blount* touching Religion, but he was not the original petitioner of him unto that Religion, but being bred up in *Orford*, his Tutor, Mr. *Blow*, was a *Catholic*, and from him he took it, and hath ever lived free from giving offence by his profession; and having this with *apology*, he hath always been loyal and obedient to law, both accompanied the Earl extremely at *Arden*, and communicated with him; and the reason of his words upon his left conference, was supposing Mr. *Montague* to have been a *Catholic*, did require him to help him to a *Prison*, but grieved afterwards he was deceived in Mr. *Montague*. And the Lord-Admiral protested he knew that Mr. *Montague* was not allied to that Religion, which Sir *Blount* said the right to be true; but said, Mr. *Montague* had not kept word with him, for he promised upon his credit not to reveal his request.

And to prove Sir *Christopher Blount* was an author, and a chief flatter of the Rebellion in *London*, the confession of Lord *Scud* was read, wherein was set down, that he went with the Earl to *Shamill Smith's*, but went not into the house; but being sent for by the Earl, went with him, and came back with him towards *Leicester*, and Sir *Christopher Blount* and the Lord *Scud*, at the chain before their coming to *Leicester*, gave charge upon the Queen's forces, and were both hurt at that place.

Sir *Christopher Blount* at the Bar confessed he was too forward in that about, and gave charge upon the *Prisoners*, but denied the killing of at that place, which Mr. Attorney charged him with; but he denied Mr. Attorney to thank charitably of him, and not to charge him with that man's blood.

Then Mr. Attorney proceeded to prove, that where it was intended and given out for a box, that Sir *Walter Raleigh* should have fought to have murdered the Earl, this matter was sought to murder Sir *Walter Raleigh*, to which purpose the confession of Sir *Frederickes* Corps was read; wherein was contained, that the Earl and Sir *Christopher Blount*, that Sunday, meaning that Sir *Walter Raleigh* had time to speak with him, Sir *Christopher Blount* desired Sir *Walter Raleigh* to kill him; and to that end, Sir *Christopher Blount* sent four times after him when he went to speak with Sir *Walter Raleigh*.

But *Blount* said, that Sir *Frederickes* Corps did much wrong him in so saying; but confessed, that he refused Sir *Frederickes* Corps was to be one of the principal executioners in his business, he wished *Corps* not to go naked to Sir *Walter Raleigh*, nor to go home to him, but to meet him upon the water, and to take some pistols with him, that in case Sir *Walter Raleigh* should not suffer him to come off, that then he should be of force to come away, and bring Sir *Walter Raleigh* with him; and this was his advice.

And being asked by Mr. Secretary, whether his thought, or was persuaded that my Lord *Cushman*, or Sir *Walter Raleigh* intended any such thing against the Earl?

Sir *Christopher Blount* answered, that he did not believe that they ever meant any such matter, nor the Earl himself feared it not, only it was a word called out to colour other matters.

Corps also confessed, that the Earl intended, after he had possessed himself of the Court, then to have gone into *London* with seven principal officers of the State carried with him, and after a while to have called a Parliament, and settled things to his liking.

* See also *Barnes's Works*, Vol. IV. p. 237 for the several words *Montague* to Sir *Arden's* conspiracy, as signed before the Lords, and others of the Council.

"ships would not stand with covetous these fellows are grown to a vet
"much thole fellows be taught courage to fight, or else this Rebel woul
"never be subdued."

Further was read, a letter all of the Earl's own writing, dated the 8th
of October, written to the Lord Attorney, saying his being in Ireland, and
the Earl here in England; signifying "that he is one to come to me, as
"I must needs interest your Lordship to do what you can for him, tho'
"it is not in your power to do what you would, you shall find him a
"man of better favour, than any is in Ireland. When I come thither, I
"found him in good place, and sometimes he entertained me to his great
"charge, which with your favour you must enable him to again. And
"let it be my duty to you, to do him what good you can."

From one of these letters, it was used by Mr. Attorney, that Lord was
a man wholly plotted for him. The 28th of September, the Earl of Essex
came to the Court; the 28th of September, Captain Wren talks with Ty-
more. Wren confideth, that Tyre fear, that within two months he
should for the great alteration, and the change that ever he saw, but
Wren understood him not. Then said Tyre, I hope not long to have
a good time in England.

The confession of one Kernal, Secretary to Owen Roe-O'Neale, taken
the 16th of February, was read, wherein was set down, That Owen
Roe-O'Neale having been in Ireland, of the plot betwixt the two Earls,
Essex and Tyre, wrote and sent to him twice, and desired to be ad-
mitted thereof, that he might do a thing contrary to their designs. But Ty-
more grew suspicious, till the matter should break out too soon: yet the
effect of the answer was this, that the Earl of Essex should be King of
England, and be Vicerey of Ireland. And that for a while he should at-
tempt nothing upon the English; and proved, that the Earl had left his
barrel of powder in the North. And Kernal being asked by a Gen-
tleman, upon his returning out of the North, what news he had, it
agreed, that Essex should be King of England, and Tyre Vicerey of Ireland.

Then said Mr. Darcy, being a witness to the 31st of March, and
brought the answer to the Earl, the Earl of Essex was to go to
England, and take that kingdom, and they to help him; and among those
whom it was reported, the Earl of Essex wrote a letter to the Earl of Ty-
more, to follow his matter thoroughly: for now was the time.

The confession of Thomas Wind, father's son to John Pym-Minister,
Baron of Lisson, and a man in great credit with that Baron, was read,
wherein he sheweth, that being with John Pym-Minister at his house,
about Macclesfield, when the Earl of Essex came over from England, Pym-
Minister asked him what he heard the Earl of Essex had in England? Who
said, he knew not; but heard the Earl was well received in England.
Then Pym-Minister told him, that the Earl of Essex was gone for En-
gland; had discharged many of the forces, and that the Earl of Devon
had in his word, that it was agreed the Earl of Essex should be King
of England, and Tyre Vicerey of Ireland.

Matheridge's confession, and some others, were spared reading; because
they only concerned the Earl of Essex.

Now Mr. Attorney opened, that notwithstanding all those plots, practices,
and treasons, were known to the Queen; yet, after all this to graciously
her Majesty regarded him, and was pleased to cover his offences, as if he
had been privately to come before her of her Privy-Council only, at the
Lord Treasurer's, but one of her Secretaries came to him, offered to
take in all his secret; say, Mr. Secretary told, for saving his brother, that
none should take notice of any thing. They once all proposed to have
gone to me to Essex-house to him, and during all the time of his restraint
from Court, his letters have always had free passage to the Queen, and
the ever gave the reading to any thing he wrote. Wherefore, Mr. Attorney
said, the action of breaking out into this that did, it was a great mercy
of the Queen's, that it signified crime were not, according to the mat-
terial law, presently put to the issue.

And here the evidence ended against Sir Christopher Blunt.

And then Mr. Solicitor General urged new evidence against Sir Charles
Dennis.

Mr. Solicitor shewing beginning, said, He would prove by Sir
Charles Dennis, guilty of all the Treason that, of a plot to kill Christopher Blunt, and
that he was a principal plotter, depose, officer and actor in all their
treasons. In first, he was alleged to be keeper of the privy chamber,
where, upon a signal given, all the Nobles to assemble, and passing
to the privy-chamber to present themselves to the Queen; and so making
their way thence, they should approach Sir Walter Raleigh, captain of the
guard; and afterwards some of the privy-councillors, and some other
 Lords. There being seated upon, they should afterwards have been put
in an honourable tray, and afterwards a Parliament should be called, and
government established; and so principally did the Earl of Essex count upon
this gentleman, Sir Charles Dennis, and to commit all his trust to him,
so that before Christopher left the land, he desired his intent to him,
and told him he would lay forth a plot for taking the Court, as he would
not be refused. And when Sir Charles Dennis was in the Country, the
Earl desired not enter into consultation about the business, until Sir Charles
Dennis came up; and Mr. Rogers were dispatched privately for him. Upon
his coming up, a meeting was had at Drury-house, where divers coun-
sels were made, Dennis, Dennis, Blunt, George and Christopher being
present, amongst whom it was agreed, the taking of Sir Walter to be very
fit, for the better countenancing of the whole.

The chief defence and prevention that Sir Charles Dennis used, was
the great love he bore to the Earl of Southampton, who however had
enslaved him his pardon, and having gained him his life, he thought he
owed his life unto him in any thing he should command him.

But Mr. Solicitor said, it behoved him rather to have been grateful and
serviceable to the Queen, who gave him life, more than to him that feed
for his life. But this was the just revenge had of God, that followed for
the foul murder he had committed.

Sir Charles Dennis perceiving that his art had extended to Treason, al-
tho' he intended counsel to the Queen's party, and as was said, he had
his far longer had to do to glad Sir George; for it was not his purpose
coming thither to do so, as they say, but to witness the matter. The things
that he had said, were therefore considered, and it was found that the
Earl did not much know how he might make his way to the Court, as

that his access to her should not be refused. But this was not refused till
his return out of the country. When at Drury-house, they meeting, and
Lettice coming thither; at the last, it was removed, the two gentlemen
of the Earl's own hand, were left, to take the Tower, for that he yielded
that, it would be a continuance to the action; the taking of the Court,
for which he would have many able men, as this would at any time
possess all the places of the Court. The manner to be taken, Sir Charles
Blunt to have the guard, Sir George Raleigh, the will, Sir John Darcy,
the great chamber, Sir Charles Dennis, the privy-council, the great
benefit should come all along by hand, as his coming thither, or cham-
ber, he should put himself between the latter two, so that he should
step to the earner where the guard usually lay upon their halberds against the
wall and possess himself of them, so as to be them he would save his heart,
and perhaps he should find of the guard, yet to take his part.

My Lord Admiral said, it was a fair warning to the Court, that they
not stay farther of setting up their houses in that manner.

When the Earl was then come into the great chamber, where of the
Lords should come out of the privy-chamber, and sitting him, to wel-
come him coming to the Court; then the Earl went into the Privy-Cham-
ber, to take their way into the Privy-Chamber.

It being asked, what should be done with them that should make resis-
tance to this attempt; it was answered, it was meant they should be killed
upon. And the Court being asked, then to lead to justice to City;
and then not long after, to call a Parliament.

A further confession of Sir Charles Dennis being read, there were set
down the substance of the Earl's former actions, and these could say fur-
ther proposed; as, whether the Court and Tower should be attempted
at one time; and whether this attempt should be with many, or with few;
if with many, where the number should assemble; and whether it should
be by the Earl and some others to be armed with Privy-Couns; and
whether Sir Charles Dennis should be to call of the Lord-Admiral and the
Secretaries?

These and some further matters also, Sir Charles Dennis had confessed
were disputed upon.

And said Mr. Secretary, since this is a World wherein Princes must be
accountable for their doings to their Subjects, that men should not mar-
vel why like proceedings were not had against Sir Charles Dennis; as these,
the reason of forbearance was not that he had deserved better, as was
commonly conceived of, than to be an Arch-Treaser; but because he was
the instrument of saving and saving his state that were first from the Queen
in Essex-house; and for this cause, as Sir Charles Dennis's Privy-Council
had been taken for his Majesty for saving his life for a time, though for
their opinions of him, they held him an original and principal traitor;
and that he advised more maliciously than any other, for he would
have had the Court fired upon the taking of it, by Sir Charles Dennis's pro-
fession, as he had done often, that he was privy and a disposer of all these
plots, but never was any denier or any, or instigator of my Lord in
these things. Sir Christopher Blunt for further clearing himself, says,
he knew not of this plot till his coming to London, upon the Earl's sending
for him; that they had allowed him to place, he knew, but to what office,
he knew not. And set more to be considered, he brought the
Lord Treasurer to remember what natural considerations were to be
had to the Earl, being married to Mabel. Now to have many advan-
tages the obligation of love, and following of that Earl, had before cre-
ated him; the World did know; and how liberal, pious and
virtuous I was of the life of mine, while it was my own, good Mr. Secre-
tary, please to remember and report truly to the Queen. I beg of you,
because I have much offended you, and have no cause to expect it, but
from the bounty of your honour and charity.

Mr. Secretary told him he freely forgave whatever he conceived might
give cause to him to be offended, and would truly perform for him what
he desired, and would desire my Lord-Admiral in join with him in it;
though he had need not seek it to them, for the Queen would require
it at their hands, to be truly informed of what they had done.

Then said Sir Christopher, I must needs confess that heretofore, I having
done much to his Majesty's service, advertised my life many times,
as the merits of this my wretched carcass will show, beseeched my for-
tunate when it was at the best, and all for the honour of his Majesty, and
in his service, and yet the never withheld notice of me at my service;
it gave me little contentment to me, but the never had the power to
have an all thought against his Majesty. Therefore once again I beseech
you, that being as I was so that Earl, you please to relate to his Majesty
what you said by me, and what I have said by you. And so stay any further
going upon me. I have much myself guilty of all that can be said against
me, and most worthy to have deserved death; wherefore requesting all
justification or remission of my offence, I wholly cast myself at her
Majesty's mercy. Sir Charles Dennis made the like proclamation.

And to ended the evidence against Sir Charles Dennis.

Against Sir John Dennis, Mr. Francis Bacon urged the evidence, begin-
ning with discourse upon the former ground of Mr. Attorney's, that every
admission implied destruction of the Prince, and that in the proceedings of
Essex II. and Essex IV. the presence in both was as in this, against certain
Subjects, the Spaniards in France, and the Treasurer in the other. And this
title of treason, that treason did include the person of the Sovereign,
was common in France. Likewise, the lieutenant of Scotland, had
very great pretensions; but the proceeding as such in this, as no longer
covering needs to prove it Treason, the act itself was Treason. The prin-
cipal charges charged upon Sir John Dennis were two, one that he was a
plotter, and of the Council at Drury-house. Another that in the instructions
he had the custody of the Privy-Councillors in Essex-house, which had a
communication with the action in the street. The plot and instruction
emerged into, was to give laws to the Queen; the preparation was to have
a chosen band of men for action; men not met together by constitution,
but assembled upon common and letters sent. For, Mr. M. Bacon, I will
not charge Sir John Dennis, although he be a man full in danger, with the
he first printed abroad, but letters were sent about this matter. The things
to be asked were the matters confessed of, and then to design for persons for
every action; and for mutual encouragement there was a list of names

down by the Earl, and their Councilors out of them were to elect fit persons to every office. The second place was in taking of the Court, and in this consultation he was *ipse Philopates Irenarchus*; you were Clerk of that Council-Table, and wrote all; and in the detaining of the Councilors, you were the man only trusted. And as the Earl of Arundel said, you held it a privilege to wear to detain pledges, and was so used to carry the Lord-Keeper with the Great Seal *sub Ludovico*, and to have had with you the Lord-Chief-Justice, a man for his honesty, honoured and well-beloved of the Citizens; and this *delictus* place you thought to have followed.

Sir John Davers hereupon told Mr. Bona, that, if with good manners I might, I would long since have interrupted you, and fixed you a great part of labour; for my intent is not to deny any thing I have said, or accuse that I have done, but to confute my self of any all, and submit myself wholly to the Queen's mercy. But in that you call me Clerk of that Council, let me tell you, Sir John Davers was writing, but his hand being held, I was forced to take the pen and write. But by and bye the Earl said he would speak to himself; therefore we being together so long, and drunk to little, the Earl went to his house, and set down all with his own hand, which was formerly set forth, touching the taking and juggling of the Court.

The examination of Sir John Davers was read, which was to the effect as before is set down touching their consultations of taking of the Court, but added, it was agreed they should all come by land, and make their way to the Queen's own person, and hoped to find war in the Court indifference.

Mr. Lord-Admiral then charged Sir John Davers again with the detaining of the Lords in *Essex-house*, and his unwillingness to have let them go, though Sir *Forbes* and *Gargy* came with a message, as he said, for letting them all go. And said the Lord-Admiral, the case was hand with their worthy Councilors, for by God he swore, though their Councilors had been in the house, yet being as he was, General of the Forces, and sent to force the house, he must and would have battered and blown it up, tho' it had been the death of them as well as the rest, and had all his own men been there, he would have done it.

It was also charged against Sir John Davers, that not ten days before this action, Sir John Davers and Sir Charles Davers were seen upon the top of the *Widow's Tower* within the Tower, viewing and surveying the place; but they said it was only for pleasure, to take view from thence, being there contented, that they affirmed the Tower was a place of small strength.

And here ended the evidence against Sir John Davers.

Then Mr. Attorney took in hand the evidence against Sir Gilly Astorick and Mr. Coffe. To Coffe, Mr. Attorney said, that he was the ancient Treasurer that ever came to that Bar; he was *Poly* the very father of the Earl; and since he was a Scholar and a Sophister, he would frame him a syllogism, and bide Coffe deny what part he would. The syllogism was this, *Whisperer committit rebellion, utroque Rege's death; si qui committit rebellion; Ergo, you intended the Queen's death;* by this syllogism, this fellow, the cunning corner of all plots, how to intrap a worthy gentleman, when I am sorry to see his overcaution, I must needs say *Sir Henry Nevil*: I say *Coffe* hearing of *Sir Henry's* landing out of France, watches his coming to London, privately comes to him, and sells him, he had commended him to him from the Earl of *Essex*, and secretly lets him know what private intelligence my Lord had received from *Coffe* by some his friends; that much mischief was taken at Court with *Sir Henry's* service in France; especially that at *Bellou*, *Sir Henry Nevil* said, it was more than he knew or had heard, but recommends his service with thanks to my Lord. Shortly after *Sir Henry Nevil* came to the Court, the Queen asked him very graciously. The Lords interpreted very well of his service; now at his next meeting Mr. Coffe, *Sir Henry* told him, he found so much matter at Court as he told him. Whereupon Coffe replied, Oh, Sir, things are altered since I saw you last, and ere long you shall for a change: my Lord is like to come in favour again, and be restored to his greatness; and using one other verse, concluded with this, *Arme ferens omnia dat, quia ipsa negat.* Coffe shall make report to *Sir Henry Nevil*, took opportunity when to disclose unto him all the Earl's plot of going to the Courts, who hearing it, objects against it, that it was a thing could not be executed but by many, and all would not keep Council. Coffe answered, that for execution they had to many come in to them, that they knew not to entertain all. A further objection being made, that tho' all places in the Court were possessed, yet *Whisperer* would rise, and make force; Coffe answered, we having the fate of the State, all will follow and take with us.

For manifestation of all the Narration penned by *Sir Henry Nevil* himself, was read in these words: "Their honours commanding him to disclose all, and his duty and conscience binding him to the same, he hath in that all-couch'd Narration set down all his knowledge. First, at his arrival out of France, he was told that he had ill offices done him at Court by divers, and found of great place, and his actions as *diver*, and contrary to them greatly blamed, to casting ill of the success of the peace. And by this it was told him, the Earl would have him know he was wronged, because he was one that loved him. After this, Coffe brought him a letter from the Earl, whereby desiring his love, and to hold it as his, he sides many other words only of compliment. To which letter *Sir Henry* returns an answer suitable to his kind provocations. But all this while I never went to him; and being in the country within ten miles of the Earl, yet I never went to visit him. But Coffe came to see from him, and told me the Earl was now at liberty, and all the world that would, might now freely come unto him: but still I put off my going, till at one time Coffe came and told me I had expelled my coming to him, and said, I say he would say *Epistola* for me; and if I came, and he charged me to be in the way, a Gentleman of my Lord's should attend my coming, and bring me to my Lord's closet. About eight of the clock that night I came to my Lord, and was met by a Gentleman, and brought up to my Lord; who entertained me kindly, and after a while, after many questions of his hopes, but used no unkind words of the Queen or State, I parted with my Lord, these having nothing but ordinary terms of Compliment passed us. Afterward Sir Coffe repairing Vol. VII.

"often to me, I asked him at one time how his Lord's matters stood in Court. At one time he answered me, well, and told me of great hopes conceived, at another time he answered me every life intently in these things, saying, it made no matter, he would Lord a safer other course; and last, then, was a present to lay up the Earl of *Arundel*, which was a warning that they meant to lay up the Earl of *Arundel* after him: but my Lord was resolved they should never catch him in any more. Then told me, my Lord had in purpose some matters, but I should not embark myself further in them than I liked; and desired me to give a meeting to the Earl of *Arundel* and Sir Charles Davers. I said, I would, but with this limitation, that nothing was intended against the Queen's person, which was *per se* But I detained them at two meetings, which caused them to make an ill judgment of my meaning towards them and the intended. Monday on *Christmas day* I standing in *St. James's Palace*, at the Earl of *Arundel*, *Arundel*, and Sir Charles Davers, who I had sent them of long. After that, Coffe coming to me, told me he had a commission to deliver a secret unto me, which was, that my Lord finding his life longer by men's power than by Majesty, he was resolved to make his appearance to the Queen, and go with strength for that purpose; describing the same manner of taking the Court, and making way to the Queen, as before is set down by others. This Coffe said he was to impart to me, as one in whose hand the Earl was confident. (But Mr. Secretary said, as he was grieved to strait of this Gentleman's full respect, his worth and abilities to have done the Queen great service, so at this right he would do him, that however the Earl was persuaded of him, yet he he would tend his duty to the Queen, that I think the first fault of the Earl's mind grew from this Gentleman.) The matter being propounded unto me, I made many objections, and put great difficulties in the conceiving; only perceiving of things being joined, my answer was, *Multa sunt que non habentur nisi cum opore*. When some persons were named for this office, I objected, that if many knew it, it would not be concealed, it was more used, it would not be perceived. The Earl of *Arundel* being named for one, said they would not trust him long stretched, for it he knew at but two hours before, he would tell. In conclusion, I was desired to think of the things proposed in case they were showed unto me. Afterward Coffe came unto me, to whom I related all in brief, he stood in that conference, and told me I would not allow it, except I say would consent and take an oath to keep nothing against the Queen's person, and against Mr. Secretary, and I would never do nor create to any of them, for he was more unto me, therefore they must do *per se*, *ipse* in that. Coffe said to me, they would only have me present to him things were doing; and if it tell out, that I should be hindered to dispatch it. Before that time, I might defer it by feigning sickness. By their appointment I should have been Secretary. (Here Mr. Secretary said, Coffe, this was great presumption, for though to answer me he had been so great matter, yet to take upon you to place another, this was high ambition.) Further, it was required that *Sir Henry Nevil* should have sent a messenger unto London, to find how the City stood affected to the Earl.

(Mr. Attorney here said, it was in their plot, so have had two hundred soldiers in the City and Country, so have blazed in palaces the fineness of this Earl's intention.) Coffe further told *Sir Henry Nevil* of a box in many men's mouths in London, and that there had been many given to the Mayor and Aldermen to look to the City, but of twenty-four Aldermen he doubted one of twenty at the Earl.

Mr. Secretary here speaking, opened what he found had related the Earl to to find a coalition and discovery of all things that he did. After, who was his minister, and as I may now him his confession, was a man much desired by the Earl; her Majesty was willing to yield any thing that might give comfort to the Earl's confidence, and be good for his Soul, less Mr. Doctor Dore, a very worthy man, to confer with him, and prepare him to a christian end. He perceiving confession to be the way to repentance, and amongst other first charging the Earl with this offence, his taking arms against his Prince, and relating to come upon the command of his Prince; the Earl answered, he thought that *revelare non debet*, and for instance showed, that David refused to come to *David* in the like kind, being sent for. Mr. Dore so sufficiently answered the Earl in his arguments, and finished him in this example, how difficult it was from his life, and upon what ground that that the Earl in a kind rebelling, and falling from his duties, desired charity confession with his own minister *Asthor*; which was yielded him. After, like a godly and very learned man, and one deserving much for this service, dealt so soundly and telephly with him, as that he made the Earl know that there was no salvation for him to hope for, if he dealt not clearly with his own conscience in the confessions of his sins, and high offences in this kind. His words so moved and moved, as that to him man he disclosed the very few in it at his house, to the purging of his soul and conscience, from the concealment of any thing he knew; and afterwards spent all the time he had to live in holy meditations, and reading of scriptures concerning the State, and discussing of the mischief intended, and most patiently forewore for the accusers and imputations he had cast upon others touching the conspiring with Spain and the Infant of Spain.

And being asked touching these men supposed to be confederates in the taking of the City, he said that *Captain Brudenell*, brother to *Sir Henry Brudenell*, and *Sir John* that would assist him, and that *Sherriff Smith*, being a Colonel of a thousand men, would bring them in all of him. And confessed by the Earl himself, that at such time as the Earl had purposed to lay down the thought of their ambitions, and had resolved contentedly in a private life, Coffe comes to the Earl, and tells him he had additions offered him, and his satisfaction was such, as his friends said he had lost a coward, with praying and hearing of sermons, and now was become a coward, whereupon Coffe persuaded him to let *Sir Charles Davers* come to him, who would let him know the mind of his friends, and after that time as the Earl had accused his confederates, being asked how he could prove the things discovered, answered, some of them have so much grace, as if I said but to them, they will confess it. Whereupon he wrote a ticket to the Earl

Ireland, I was with him. And also all this in answer to wright against the present fact, and so I have nothing of it. That may plead mercy for me, yet for her Majesty, out of the abundance of her grace and mercy, shall afford me life. I doubt not but as I have done, so I may live with you, and as I live, I will be as ready as any subject the Queen hath to do the service for her Majesty which shall deserve my life. And this is all I wish, that since I have but a life to give unto her Majesty, that I might give it to the performance of some more acceptable service rather than to this end. But if it be refused, as I have desired, that die I think it is not life I can for; for a death I owe unto her Majesty, and will yield it cheerfully. And since the Earl that goes on, whose conduct was brought up to this due punishment, hath left a blot upon me, and he has touched me in reputation and credit, as if I had been plucked and procured him to more dangerous practices than these, I must needs think myself, that neither in foreign practices, which I count considerable, nor in my domestic duties, when I count that with diligence, in respect of their nearness to me, I have ever had to do so far, as to be so much as in the heart of the State. Against you, Mr. Secretary, I cannot but confess I have offended to too great wrong, and I am aware, that I please your Honour of your charitable disposition to forgive me, otherwise of the State I have deserved well. And in my further charge, I desire humbly to be permitted to private conference with your honour, my Lord-Admiral, and with Mr. Secretary.

Which was yielded to. And that night he was brought into the Court of Woolsack, after the Court rose.

So, when the Court being demanded what he had to say, why Judgment should not be given against him, said these words: I have nothing to say in way of Judgment, for it is but just that I be adjudged to die: only this I say, my great fault was to confess unto things propounded, for my instance was far from thought of hurt unto her Majesty. I was never any persecutor or subjugator of the Earl in these things, nay, till I was first provoked by the Earl out of the country. I was a stranger to these purposes: then when my Lord or Ambassador, to whom I owed my love and fidelity, that he was so far engaged in the business, and desired my assistance, I yielded assent to him, and gave consent to that I now repent; for there was no reason in me to seek changes, the present being better to me than alteration could promise. Ambition I had none, for my estate was goodly; discontentment could not trouble me, for I had been well used; but by all this my offence was the greater, in giving offence to the Queen, who had been so gracious unto me. Contrary to the resolution I came with, I have pleaded Not guilty, but this grew through the error of my understanding; but to the justifying of what is found, I also confess myself guilty. And though I have no cause to hope, yet do I not despair of her Majesty's mercy, and if it shall be her Majesty's pleasure to show mercy, your Lordships and all here shall feel, that none is so lost that shall not be recovered. But if her Majesty's pleasure be to execute Justice, I only request this with my best prayer, that I may die in her Majesty's favour. And these few requests I have to make, which I recommended unto your Lordships, my Lord-Admiral, and to your Honour, Mr. Secretary, that if I must die, that I may have some time given me to settle my conscience, and compose my soul, before my being having been much, my care hath been the less this way; and if it may be thought fit, I desire to have one of my servants to report to me for ordering of some things I have to do. And lastly, that your Honour, Mr. Secretary, remembering what your promise was to me, in respect of my defence and alliance to some noble blood, you will do far more me, as to be, the favour of her Majesty, than I may be denied. And one request more, I beseech you, let me make first to the Earl of Southampton before I die.

So Christopher Blount upon this said, My Lords, this week, bearded head of mine made not forget that which I minded to have begged: That in respect I have always professed Armin, and been faithful of the Field, a place of Honour, I may have some grace as is desired.

My Lord-Admiral and Mr. Secretary told them both, they would remember it to the Queen.

Sir John Davis said, I have nothing to say, but only to appeal to mercy. I confess I have highly offended, yet if it please her Majesty to extend mercy unto me, it shall not be to an unworthy servant: my former offences and disorders have not been to purchase favour, but to discover truth; and though by this I challenge no mercy, yet it estimates defect of favour. My great remorse and grief is for my past sin's sake, to think that I being so much benefited and advanced by her, must now be the means to undo her; for I hear all her estate is seized on. Wherefore I beseech this Court, that the be not afflicted for my offence, but may enjoy what was her own.

Mr. Secretary, upon occasion of this speech of Davis, what he disclosed, said, The' his place did appropiate that to him to be the deliverer and restorer of requests; yet in this business nothing had been done or said by any, but those at least of the chief Councilors of State have been privy to all that passed, and I only the Recorder stood aloof from them. And this I will say, was during all the time of the Earl's trial from the court, his Letter was always before me, and I was to the Queen, and he might write what he liked, the Queen would ever read it.

Sir Gedy Morrice. I have little to say; but let what I have done be considered, and my offence will be found less than others; but the law hath adjudged it Treason, and I must die, and not unworthily for the true being taken, the heavens shall not find. I did the office of a servant as my master bids me, but it was my fault to obey what was not just in him to command. My poor estate I pray you let be considered, it may be thought better of than it is. What it is, I shall tell it down, and humbly pray that my poor wife and children may be paid.

Coffe confessed the Jury had done but right, in discharging their consciences, yet it was true that Davies had, notwithstanding, been afterwards for some time a day, was faithful. The previous proceeding afforded, and all reasonable requests yielded, emboldened me to make those last request: When I was returned, I had not about me above two shillings. I had 350*l*. of ready money fixed upon in my chamber. When I came into the Tower, I was put into a dark place; but afterwards Mr. Lieutenant giving me, relieved me, and set me in a better place. Wherefore I pray to be released unto the same place as, for there I am now provided of things necessary; otherwise perhaps I may be coming for things of this world for necessary furniture of my house, I would now more willingly spend all my thoughts in observations.

This request was granted. My second request is to you, Mr. Secretary, that I may have the company of some Divine relating to me for the comfort of my soul, and comforting of my faith, that so at my last will in this world with joyful arms I may embrace my Saviour; and for human respects, I desire the law may be satisfied with my life, without torturing or quarrelling my Body; and the rather for favour's sake unto him, though I have neither place nor great birth to speak for that. To plead for longer or other mercy I will not; but when my body shall be executed, favour be unto my soul, if ever I intended it unto her Majesty's person. Also it was my too much love unto my Master that brought me into this, but as that last, my Master, said, now the faults were taken from him, and he was his father's son, but too late, heretofore in the course of my private state, things went so smoothly with me as I could. For, my religion was always foreign, to the profession at this day. How unlike things I would do it, but I desire to know whether now I must speak, or that I may be allowed pen and paper to write them hereafter.

It was allowed him, should have means to write what he would.

Here ended all that passed before Judgment.

The Lord Chief Justice of England, Sir John Popham, being now to pronounce Judgment, said these words:

"I am sorry to see any so ill affected to this State as to become plotters and practisers against the State, and that so strongly as you and others in this action have done. And my grief is the more in that men of worth, service and learning are the actors in this conspiracy: I shall it be said in the world abroad, that our Englishmen, now after forty-three years peace under so gracious and renowned a Prince, are become weary of the Government of such a Queen, whom all the world esteems for her government? Consider it well, whatsoever hath been hopes in this attempt of change, what would have followed upon it? Let me tell you of the fearful hurt, the blood of children, families and friends; for some of your lives can otherwise think but this action would have cost much blood. And I am sorry to think, that Englishmen should form to excite themselves by ignorance of the law, which all subjects are bound to know, and are born to have the benefit of. Some of you now at the Bar are Christians. When, I pray you, did you ever read or hear that it was lawful for the subject to command or contradict his sovereign? It is a thing against the law of God, and all Nations. God forbid but that by action men should be allowed to expand intents. Now your actions tending to a sovereignty, cannot but by your selves be expounded Treason. But your intents, if they were otherwise, as you pretend, yet are not they to expose the law. For know that, that the law, which tends principally to the preserving of the Prince's person, is more tender and precise in this than in any other point."

"And although your Example be pitiful, yet by this, let all men know and learn how high all actions treasonable do touch, and what they tend to. To leave off from further discourse, I should now remember one thing to you all, but I see you all careful of it; that is, the care of your souls, to keep them from death, whereas his is the cause, and fin is not removed but by repentance, which being truly and heartily performed, then follows what the Prophet David speaks of, *My God are they as broken God compared to sin*. There will be a course taken to instruct you how to kill sin in this world, which otherwise shall not be killed in the world to come, for as you leave this world, so shall it be with you in the life to come."

And then pronounced Judgment against every of them, as in case of High-Treason.

See Mr. Davis and Coffe's Speeches at Execution, for their Trial, vol. I. p. 129, 130.

IX. *The Trial of Sir Griffin Markham, Knt. Sir Edward Parham, Knt. George Brooke, Esq. Bartholomew Brookeby, Esq. Anthony Copley; William Watfon, Priest; William Clarke, Priest, for High-Treason, at Winchester, November the 15th, 1603. 1 Jac. 1st.*

The Names of the Commissioners.

The Earl of Suffolk, Lord-Chamberlain.
Charles Earl of Devonshire.
Henry Lord Howard.
Robert Lord Cecil, Secretary.
Edward Lord Weston, Comptroller.
John Stanhope, Knight and Chamberlain.

Lord-Chief-Justice of England.
Lord-Chief-Justice of the Common-Pleas.
Justice Gandy.
Justice Walsley.
Justice Warburton.
Sir William Wade, Knight.

ON Tuesday the 15th of November, were assigned at Winchester, George Brooke, Esq. Sir Griffin Markham, Knt. Bartholomew Brookeby, Esq. Anthony Copley, Gent. William Watfon, Priest; William Clarke, Priest, and Sir Edward Parham, Knt.

The Effect of the INDICTMENT.

FOR confounding with the Lord Grey and others, traitorously to surprise the King and young Prince at Greenwich, to carry them to the Tower guarded with force, that after the slaughter of many of the guards, should put on the guards coats, and to bring them, sending the Lord-Admiral before to signify the treason where the King was, and escape he made by the guards from Greenwich; and therefore desired to be taken in there for more safety. Which, if they could have effected, the weapons and jewels in the Tower should serve the cause for the stifling of all other purposes; that some of them of the Privy-Council, viz. the Lord-Chancellor, Treasurer, Cook, Chief-Justice, should be removed and cut off; and Mr. Watfon should be Chancellor, Brooke Lord Treasurer, and Marston Secretary; Gray Lord-Marshal and Master of the Horse, if the new Master of the Horse were otherwise preferred; but for the Lord-Chief-Justice no man named. If these passed for bringing them to the Tower laden, then to convey the King to Dover, where George Brooke presumed upon his interest with Thomas Peck; but Mr. Attorney justified his Assurance of the Lord Chief. In one of these places they have kept the King for the space of three months, and at their first entrance, they should require these things. 1. A general pardon of all their past and intended crimes against the King and Prince. 2. The King should yield to a Toleration of religion, with an equality of all Counsellors and other Officers, as well Papists as Protestants, within his Court or otherwise. 3. That he should remove and cut off the fore-mentioned Counsellors, and others who should be thought to hinder this designment, for which purpose Watfon named Peck, who was, to allege sufficient matter against them.

And for the better effecting of this their purpose, Watfon had devised under writing on oath should be administered for the profanation of the King's person, for the advancement of the Catholic religion, and for the extirpation of all heresies that should be revealed unto them. That all the actions should be proceeded withal in the King's name, and they meant to lead to the Lord-Mayor and Aldermen of London, and they King would speak with them: when they meant to keep in life custody, till they had delivered hostages to them not to withhold their assignments, and to furnish them with all such necessities as they should require from them. Watfon was the villainous hatcher of these Treasons; and Brooke, upon the leaving of them, was at once a prosecutor, and the Lord Grey more eager and violent than he, purposing to make a run to the King for carrying over a regiment for the relief of Colours, which he would have made for the defence of his own person in this action, as having the protection of the catholic forces according to the promises of George Brooke, Marston and Watfon, and knowing not how he might be dealt withal amongst them.

Mr. George Brooke said little or nothing in his own defence, only he made a ridiculous argument or two in the beginning; viz. that, that only could be the judge, and examiner of any action, which was the rule of the action; but the Common Law was not the rule of the action, Ergo, it could not be judge or ruler of the action: and therefore appealed to the person of the King. 2. That the Commissioners or Common Law had no authority over them; because it is a maxim in the law, *quis quis condemnatur, auctoritate affirmatur*; but the Common Law could not absolve him, being guilty, therefore could not condemn him.

Mr. Attorney to this would have answered particularly, but was by the Commissioners and Judges willing to reduce himself to his own element.

My Lord Henry Howard undertaking to have answered him, my Lord Chief-Justice told him, that the King, by reason of his many crimes, had

many under him to execute the law of Justice; but he kept in his own hands the key of Mercy, either to bind or loose the proceedings, as in his own privacy without he should think fit.

Therefore said Mr. Attorney, you, Mr. Brooke, puzzling yourself to be learned, cannot be ignorant that both your intentions have been, and you must be liable and subject yourself to the trial of the law of this nation, wherein you were born, and under which you live, *Et ignemque juris sui excipit*. These treasons were termed by the Lord Chief-Justice Sir, as Mr. George Brooke confessed to Watfon and the Lord Grey; but, said he, *Walter Raleigh* and I are charged at the Assize. Whereupon Mr. Attorney gave a touch of the treasons of the Lord Chief-Justice and Raleigh, who had procured from *Armsbury* five or six hundred thousand Crowns, to be disposed by the Lord Chief-Justice, who should thereafter raise forces for the extirpation of the King and his Cubbets, and putting both Ireland and England in combustion, and to upon Colchester, seven out of Spain, to meet Raleigh at the Isle of Jersey, and to put on foot both sides, both within and without the land.

Mr. George Brooke, after his first arguments, spoke little or nothing for himself, more than his own confession led him otherwise to excuse or qualify his own offence; only he gave oath of a letter, which he said, he received from his Majesty, wherein he had liberty and authority to deal in the founding out of these practices; but neither at any time before nor at his arraignment, could these the said letters. And the King being by some of the Lords Commissioners questioned withal on that point, requested his letter to be produced, and demand he wrote any such letter. Sir Griffin Marston answered exceedingly well, and truly to all things; saying nothing for his fault of Treason; but that he deferred death only on the persuasion of Watfon, by whom he was misled, and affirmed that the King before his Coronation was not an actual, but a political King; only he desired to avoid the imputation of effusion of blood in that enterprise, and (if it were possible) the brand of a Traitor for his house and posterity, protesting how careless he was of his own life, which he desired to be exposed to any hazard or sacrifice (but) it was never so desperate; which if the King would not (in mercy) yield him, yet he desired that Lordships to be inconsiderate, that he might die under the Axe, and not by the Halber.

Watfon spoke very shrewdly and deviously, without grace, or utterance, or good delivery; which (added to his forebidding villainy) made him more odious and contemptible to all the hearers.

Clarke, the other Priest (an excellent nimble-tongued fellow), of good speech, more honest in the carriage of the business, of an excellent wit and memory, boldly, and in well-behaving terms, uttering his mind, not unwilling to die, but desirous to avoid the imputation of a Traitor. Copley, a man of a whining speech, but a shrewd invention and resolution. Brookeby drawn in merely by Watfon to take the oath before-mentioned, for sake of the particulars, as the bringing the King to the Tower for the advancement of religion; but spoke with nobody to incite them to the business, nor came himself according to his Time appointed by Watfon, the 2d or 3d of June, but at that instant attended upon the Queen. Sir Edward Parham was also by that villain Watfon dead wished after he had rendered him the oath to this purpose; that he understood the Lord Grey meant with forces to set upon the King, and to surprise him, that against that time, whether he would nor dow his sword against the Lord Grey with the King's servants and friends? And if the King's servants were defeated, whether with the rest of the Catholics he would not encounter the Lord Grey, and if he could bring him to the Tower for his relief and the advancement of the Catholic religion?

Parham told him, that he would is, if he was persuaded that his intention of the Lord Grey were true, which at that time Watfon could not assure him of, for he did but hear of so much: but said he, when I have better affairs than these, which will be with in three or three days, you shall further hear of me. He laying the same, Watfon came not, and so Parham's proceedings went no further; but being urged in the point for bringing the King to the Tower, for the advancement of the catholic

* Copied from a MS. in the Bodleian Library, *Article in Archives*. A. 1017. 44. B.

† Sir John Hesketh (successor General Temp. Will. III.) in his reply to Sir Bartholomew Shewar's *Martyrdom and Government of England Financed*, pp. 121, 122, says, the King came to London in May, and on 20th July was the pretended plot discovered; and in December following, the pretended delinquents were tried at Winchester, together with Watfon and Clarke. Their accusations were in general.

First, To cut the Crown on the Lady Arabella's head, and to seize the King.

Secondly, To have a toleration of Religion.

Thirdly, To protect and assist him from foreign princes.

Fourthly, To turn out of Court such as they disliked, and place themselves in Office.

Of these the last article is treason; what remains the rest are, it is doubtful. What of them was proved against the Lords Chief-Justice and Grey, Watfon and Clarke, or how their Treason were managed, does not appear; but for Walter Raleigh's Trial does appear, and it much like the Lord Grey's, and shews of some circumstances of it, I think, it is to be taken notice. Indeed of certainty, viz. in the Lord Raleigh's Trial, the east words of the foregoing story, and the same, were made use of in Sir Walter Raleigh's, interpreted as the Council thought fit; at which it was attending to the law, which was all that was designed by the Council, and said to the Judges. I have no need to me through all the remainder of Sir Walter Raleigh's Trial, as it is printed before the History of the World, because the parallel is too exact, and needs too close to the memory of persons gone: and I will say, that if Sir Walter Raleigh was guilty of the things he was accused of by the witnesses, though the accusation does not amount to a legal proof, it was High-Treason; but if the Lord Raleigh was guilty of the things he was accused of, he was not guilty of High-Treason.

And the same Author, says, pp. 131, I think it plain at this day, that of Sir Walter Raleigh's I thought a short story, what the Lord Raleigh's thought, the Author says, I am loath to conjecture, but if any person will give himself the trouble of reading and comparing the Trial of the Lord Raleigh with that of Sir Walter Raleigh, they will find them easily parallel in a number of other particulars.

2. *Obj.* by *Mr. Le. d. Chief-Justice*. *By the Law we had nothing to do in this matter.*

Ans. "Judges cannot take notice of private causes or private injuries; but we are a great deal with the Law." The Judge informed the King of the law, but out of a sort of privilege. It is true, 3. *He. Yl.* If the Judge relieves, that no Catholic man ought to be admitted; but that was a question of public law. It is the same of non-residence; it is a question of public law. We have done no offence to the State; let us therefore be contented with our own privilege.

3. *O.* Another, *The King's pleasure, not we should deliver the reason of that we have done to be just.*

If we clear our consciences, we have no bargained ourselves. The King's Pleasure cannot reverse their judgment; the Judges are, therefore, not the Parliament. Let us find a middle way to the Lords, then we are ready to do so, — do not undo this House.

Other, *3. re. resolution* give him a private reason. Not to be informed a difference between his Majesty and the Commons. *Response.* *As before, no answer.* The question is not a matter of privilege, but of submission. Let us sit down then as Lords of the Council, and not as Lords of Parliament.

We do no ways counsel or counsel with his Majesty. The King is so very good in honour. If we go to his Majesty, they may be considered with it, in respect to the King's honour. It is the act of his Majesty, not a question of public law. "Whether the Charter of Parliament ought to have any way."

Quest. Whether we ought to, *for the King's convenience?*
The King's message was, that we should consult with our own selves, and resolve on our selves; then no need to confer with the Judges; if we cannot, then it is to be resolved by the Judges.

The Judges have judged, and we have judged: What need then of conference? Let it be no spark of that grace taken from us, which we have had already from his Majesty. Let our reasons be put into articles, and delivered in all humblest words unto him. Upon the conclusion of this debate in this manner, the House proceeded to question 3, and the first was,

1. *Quest.* Whether the House was informed in the matter?
And the question was answered by general voice, That the whole House was informed.

2. *Quest.* Whether the House was informed of the matter?
Response. That they shall be set down in writing; and ordered further,

That a committee should be named for that purpose, and appointed first to set them down in writing, and to bring them to the House, there to be published, and to receive their allowance.

The Committees were suddenly named, viz.

<i>Sir Robert Worsfield.</i>	<i>Mr. Mordaunt.</i>
<i>Sir George Allen.</i>	<i>Sir Arthur Agge.</i>
<i>Sir Francis Bacon.</i>	<i>Mr. Francis Tate.</i>
<i>Mr. Yelverton.</i>	<i>Sir Robert Little.</i>
<i>Mr. Dym.</i>	<i>Sir Henry Nevill.</i>
<i>Sir Francis Hayles.</i>	<i>Mr. Attorney of the Woods.</i>
<i>Mr. Holby.</i>	<i>Sir John Hild.</i>
<i>Mr. Recorder of London.</i>	<i>Sir John Hild.</i>
<i>Sir Edward Hild.</i>	<i>Sir John Hild.</i>
<i>Sir Francis Barnington.</i>	<i>Mr. Hild.</i>
<i>Mr. Wymon.</i>	<i>Sir Edward d. Bedford.</i>
<i>Mr. Hild.</i>	<i>Sir John Hild.</i>
<i>Mr. Fisher.</i>	<i>Sir Robert Little.</i>
<i>Sir Edward Montagu.</i>	<i>Sir Francis Tate.</i>
<i>Mr. Renshaw.</i>	<i>Sir Robert Little.</i>
<i>Sir William Fitzwilliam.</i>	<i>Sir John Hild.</i>
<i>Mr. Hild.</i>	<i>Sir Edward Hild.</i>
<i>Sir Francis Chabrier.</i>	<i>All the Serjeants at Law.</i>
<i>Mr. Holby.</i>	<i>Mr. Nodwell Bacon.</i>
<i>Sir Robert Worsfield.</i>	<i>Mr. Hild.</i>
<i>Sir John Hild.</i>	

To meet this afternoon at two a clock in the Exchequer-Chamber.

The authority given unto them by the House, was this:

The House being resolved upon the question, That the reasons of their proceedings Resolution, touching the Return, Admittance and Retaining of Sir Francis Goodwin as a Member of this House, should be set down in writing, these Committees were specially appointed to perform that service, and have warrant from the House to lead for any Officer, to view and search any Record, or other thing of that kind, which may help their knowledge or memory in this particular service: And having deliberately by general consent set down all such reasons, they are to bring them in writing unto the House, there to be read and approved, as shall be thought fit.

Die Lunæ, vii. 3^o de Aprilis, 1624.

It was then moved, That Committee might be named to take the examination of the Sheriff of Buckinghamshire, who was by former order sent for, and now come. And in that end were named,

<i>Mr. Solicitor.</i>	<i>Mr. Serjeant Tansford.</i>
<i>Sir Robert Worsfield.</i>	<i>Mr. Serjeant Lee.</i>
<i>Sir William Fitzwilliam.</i>	<i>Mr. Yelverton.</i>
<i>Sir Thomas Chabrier.</i>	<i>Mr. Francis Mordaunt.</i>
<i>Sir Robert Worsfield.</i>	

Who were appointed to take his examination presently.

Sir Charles Cornwallis made in excuse of Sir Francis Goodwin's absence from the House, and pray'd, That they would as well in their own judgment pardon it, as witness and affirm his care and modesty upon all occasions to the King, as that he had forbore, during all the time of this question, to come into the House.

The examination was presently taken by these Committees, and returned in this form.

Inter. 1. *IPz* he removed the County from Aylesbury to Brickhill?

He hath, it was by reason of the plague being at Aylesbury, the County being the 25th of January, at which time three were dead of the plague there: it was the only means of saving his County.

Inter. 2. *Whether he were present at the Election?*

Ans. He was present, and was as usual with this second place to Sir Francis Goodwin, as the first to Sir John F. was: but Sir Francis Goodwin went, having the election, he should not hold to him any Freeholders, for the election he thought would be without any Freeholders both; first to Sir John, second to Sir F. As about eight of the clock he came to Brickhill, he was then told by Sir George Fitzwilliam, and others, that the first voice would be given for Sir Francis Goodwin. He hoped it would not be so, and desired Sir George Fitzwilliam to deal with the Freeholders. After eight of the clock went to the election a great number, there being at the County After the Writ read, he fell in among the points of the Proclamation; then finally proposed Sir John F. and Sir Francis Goodwin. The Freeholders first, *A Goodwin, a Goodwin.* Every Justice of Peace on the bench said, *A Goodwin, a Goodwin.* and came down from the bench; they named any for a second place, and desired the Freeholders to name Sir John F. for the first. Sir Francis Goodwin being in a chamber near, was first by the Sheriff (the Justice) and he came down and earnestly persuaded with the Freeholders, saying, Sir John was his good friend, had been his father's, and that they would not do Sir John that injury: notwithstanding the Freeholders would not do it, but all cried, *A Goodwin, a Goodwin!* Some crying, *A Goodwin, a Goodwin!* as the number of fifty, or three hundred, and Sir Francis Goodwin, in his chamber, dealt very plainly and earnestly in this matter for Sir John F.; for that Sir Francis Goodwin did so earnestly persist it unto him.

Inter. 3. *Why delayed him to make the Return so long before the day of the Parliament?*

He being here in London, Mr. Attorney-General, the second of March, at the chamber in the Inner Temple, delivered him two Cap. Titles at night, and before he made his return, he went and advised with Mr. Attorney about his return, who persuaded it, and it was done by his direction: and the return being written, upon Friday after the King's coming through London, near about my Lord Chancellor's gate, in the presence of Sir John F., he delivered the Writ to Sir George Fitzwilliam, and at this time (it being about four of the clock in the afternoon) and before they parted, Sir John F. delivered him the second Writ sealed, Sir John F. Fitzwilliam, Sir George Fitzwilliam, and himself, being not above an hour together at that time, and never had but this new Writ of Parliament to him delivered.

Subscribed, Francis Chyke.

This was returned by the Committee to the hands of the Clerk, but not at all read in the House.

Mr. Speaker remembers the matter of conference with the Judges, and offered to repeat and put again the questions that were formerly made; being before uncertainly and unexpectedly left (as he said) in the case of Buckinghamshire, viz.

1. *Whether the House was informed in the matter?*

2. *Whether they should answer such the Judges?*

And at length induced the House to entertain the latter question; and, being made, was carried by general voice in the negative, no conference.

Upon this passage, it was urged for a rule, That a question being once made, and carried in the affirmative or negative, cannot be questioned again; but most hard in a judgment of the House.

It was thought fit that Mr. Speaker should attend the Committee for examining the reasons in Sir Francis Goodwin's case, not by commission, but by voluntary of himself.

Die Martis vii. 3^o de Aprilis, 1624.

THE reasons of the proceeding of the House in Sir Francis Goodwin's case, passed by the Committee, were, according to former order, brought in by Mr. Francis Mordaunt, and read by the Clerk, directed in form of a petition.

To the KING's most excellent Majesty,

The humble desire of the Commons House of Parliament to his Majesty's Majesty in Sir Francis Goodwin's case.

MOST GRACIOUS, our duty and loyal Sovereign, relation being made to us by our Speaker, of your Majesty's royal clemency and assistance in hearing us, and of your princely prudence in discerning, showing affectionate desire rather to receive satisfaction to clear us, than count to punish us: we do in all humblest words our most bounden thanks for the same; possessing, by the bond of our Allegiance, that we never had thought to offend your Majesty, as whole yet we shall ever be profuse, with loyal hearts, to become ourselves and all we have for your Majesty's service: and in this particular, we could find no quiet in our minds, that would suffer us to entertain other thoughts, until we had shewed our answer to your most excellent Majesty; for which nevertheless we have prepared of the longer time, in respect we have prepared some precedents, requiring search, to yield your Majesty better satisfaction.

There were objected against us, by your Majesty and your reverend Judges, four things, to wit: our proceedings, in receiving Francis Goodwin, Knight, into our House.

Objection 1st. The first, That we offered him a false power of examining of the elections and returns of Knight and Burgess, which belonged to your Majesty's Chancery, and not to us: For the said return of Writs were examined in the Court where they are returned, and the Parliament Writs being returned into the Chancery, the returns of them ought to be there examined, and not with us.

Our

Our humble answer is, That, since the 26th year of King Henry IV. all Parliament Writs were returnable into the Parliament, as appears by any precedents of record ready to be viewed, and consequently the return thereon examined. In which year a Statute was made, That thenceforth every Parliament-Writ, containing the day and place where the Parliament shall be holden, should have this clause, viz. *Et ad hoc non nisi a placito assensu nobis dante per nos vel per nos legatos nros in personam ipsorum nrorum in Convocatione expressa et de iure in forma statuti conferri solent.*

By this, although the form of the Writ be somewhat altered, yet the power of the Parliament, to examine and determine of elections in manner; for so the Statute hath been always expounded ever since, by us to this day; and for that purpose, the Clerk of the Crown hath always used to send all the Parliament-writs, upon the Commons House, with the Writs and Returns; and also the Coronators, in the beginning of every Parliament, have ever used to appoint special Commissions, viz. the Barons, Judges, and other Justices, for examining comers concerning elections and returns of Knights and Burgesses, during which time, the Writs and Returns remain with the Clerk of the Crown; and after the Parliament ended, and yet before we are delivered to the Clerk of the Penchance in Chancery, to be kept there; which is warranted by reason and precedents. Reason, for that it is fit that the returns should be in that place examined, where the appearance and service of the writ is appointed. The appearance and service is in Parliament, therefore the return examinable in Parliament.

Precedents, viz. first in the 26th year of the reign of the late Queen Elizabeth, where, after the Writ was returned into Chancery for choice of Knights, and election made, and returned, a second was before the Parliament made, as an order by the Lord-Chancellor, and thereupon another election and return made; and the Commons being attended with both Writs and Returns, by the Clerk of the Crown, examined the first, allowed the first, and rejected the second. So after 23 Elizabeth, a Burgh was returned dead, and a new chosen, and returned by a new Writ; the party returned dead appeared, the Commons, notwithstanding the Sheriff's return, admitted the first chosen, and rejected the second. Also, the 24th year, a Burgh's chosen for Aul was returned lame, and a new chosen upon a second Writ; the first declined, placing the Commons examined the case, and finding the return of lamer to be true, they related him; but if it had been false, they should have rejected him. After 43 Elizabeth, the Sheriff of Northampton returned himself elected; the Commons finding that he was not eligible by Law, gave a Warrant to the Chancery for a new Writ to choose a new. After 43 Elizabeth, a Burgh was chosen for two Boroughs; the Commons, after he had made election which he would serve for, sent Warrant to the Chancery for a Writ to choose a new for the other Borough: Of which kind of precedents there are many other, whereof we have to trouble your Majesty. All which together, viz. the use, reason and precedents, do concur to prove the Chancery to be a place appointed to receive the returns, as to keep them for the Parliament, but not to judge of them; and the reasoners might be good, if the Chancery might, upon legitimate or Sheriff's returns, send Writs for new elections, and those who were returned in Parliament; for so, when fit men were chosen by the Coronators and Boroughs, the Lord-Chancellor, or the Sheriff, might displace them, and send out new Writs, until some were chosen to their liking; a thing dangerous in precedents for the time to come, howsoever we self securely from it at this present by the new Lord-Chancellor's integrity.

Objection 2d. That we do not in the case wish to such prescription, and freely for a Council of gravity, and what respect to your most excellent Majesty, our Sovereign, who had directed the Writ to be made; and being but half a body, and to Court of Record, not, rejected returns with the Lords, the other half, notwithstanding it is proved to us.

Our humble answer is, on the prescription, That we entered into this case, as in other Parliaments of like cases hath been accustomed, calling to us the Clerk of the Crown, and viewing both the Writs, and both returns, which in cases of and moreover, though not of Bills requiring three readings, hath been warranted by common usage amongst us; and thereupon, well finding that the latter Writ was awarded and sealed before the Chancery was republished of the former, which the Clerk of the Crown, and the Sheriff of the County, did both testify, and all held to be a clear fault in law, proceeded to annul it with the consent of the latter election. For our lack of respect to your Majesty, we could wish that our hearts, we were not fully in that be in consuetudine, presiding that it was, many months ago, as we said before, that you, your Majesty had taken to yourself any special notice, or directed any counsel in that case, other than the ordinary awarded Writs by your Majesty's officers in that behalf; but if we had known at much of time as I have, by your Majesty's royal mouth, we would not, without your Majesty's privity, have proceeded as that manner. And further, it is a private your Majesty to give us leave to inform you, that in the examination of the case of the Sheriff awarded unto us, That Commons agreed to yield the place of the two Knights to Sir John Fortescue, and in his own person, at the time of election, with extraordinary civilities, entered the sheriff's return to be, and caused the return to be made up on that purpose, but the sheriff's return refused to feed them. Concerning our refusing conference with the Lords, there was none desired unto us, but we were called, and then we thought, That in a matter private to our House, which, by rules of order, might not be in us asked, or might, without any imputation, refuse to confer. Yet understanding by their Lordships, That your Majesty had been informed against us, we made haste (as in all duty we were bound) to lay open to your Majesty, our good and precious Sovereign, the whole manner of our proceeding. not doubting, though we were but of a body, as to make new laws, yet for any matter of privileges of our House, as we said, and ever have been a Court of counselors, of sufficient power to discuss and determine without their Lordships, as their Lordships have said always to do for their without us.

Objection 3d. That we have, by our sentence of refusing Goodman, admitted, That our writ is makers of law, which is contrary to all laws. Vol. VII.

Our humble answer, That notwithstanding the precedents which we truly delivered, of admitting and returning Outlaws in private actions in the Commons House, and none remained for that cause; yet we received to great trouble have delivered from your royal Majesty's own mouth, with such excellent strength and light of reason, more than before, in that point, we heard or did conceive, as we have now prepared an act to give our House, That all Outlaws hereforth shall stand enabled to serve in Parliament, but as concerning Goodman's particular, it could not appear unto us, having therein by examined all parts of the proceedings against him, that he stood as Outlaw, by the laws of England, at the time of the election made of him by the County; and that for two causes; the first is, That where the party outlawed ought to be five times proclaimed to appear in the Sheriff's Court; and then not appearing, ought to be adjudged outlawed by the judgment of the Coroners of the County; a thing appertaining to their duty in the Highways of London, that Goodman was five times proclaimed, not that the Coroners gave judgment of outlawry against him; but a Clerk, lately come to that office, hath near, many years after time, and since this election, made entries, interlined with a new hand, that he was outlawed; to which new entries we could give no credit, if that the parties, if whole fact Goodman was true, have testified in their writings of release, That they never proceeded farther than to take out the Writ of Exigent for an outlawry; and being then paid that money which they thought by which we find, That Goodman was not five times proclaimed, nor adjudged outlawed, being a thing usual in London to spite that proclamation and judgment, if the party could avoid it; and so record being made for many years together, that either of them was done.

The second cause was, for that the Writ of Exigent, by which the Sheriff was commanded to proclaim him five times, was never lawfully returned, nor certified by Coroners; without which, we take it, That Goodman stood not disabled as an Outlaw.

To this, adding the two general orders by Parliament, which had cleared the outlawry in truth and fullness, (the first were) and that Goodman could not apply the pardon by Sheriff; for that so record not return was extant of the outlawry, whereas he might ground a fine for, we were of opinion, and in your Majesty's most reverend Judges would have been if they had known thus much, That Goodman stood not disabled by outlawry to be elected or serve in Parliament, but when we considered further, That the clerk taken against Goodman for drawing him into this outlawry of purpose to disable him to serve in this place, whereas the County had freely held him, was unjust; we could not, with the reputation of our place, serving as a Council of gravity, in allowance or continuance of that course, confer him to be rejected as an Outlaw; the particulars of which were these, viz.

Two Exigents awarded, the other seven years past to the Highways in London; no entry made of his proclamation; nor of any judgment of the Coroners, nor any return of the Exigents made or returned; the party plaintiff satisfied; the pretended outlaws being but upon a mere process; and as to your Majesty's dates and contents, pardoned now this Goodman was elected Knight, the Exigent now brought out since the election, procured to be returned in the name of the Sheriff, that they were, and are long force dead, and new entry made of the five proclamations and Coroners judgment; and now a return made of that old Exigent, which could be of no use, but only for a purpose to disable him for that place. Upon all which we could do no less in true discretion than certify the election made *sanctum et iustum* to be true.

Objection 4th. That we proceeded to examine the truth of the facts of not-lawful, and gave our sentence upon that, whereas the right to have been found by Sir John's return of the outlawry from further concernment, whether the Party was outlawed or not.

Our humble answer is, That the precedents cited before, in our answer to the first objection, do prove the use of the Commons House to examine returns of elections, and returns, and have not been tied presumptuously to allow the return; as if a Knight or Burgh were actually returned dead, or lame, yet when he appeared to the House to be living and found, they have, ever since, returned him, received him into the House, preferring the truth manifest before the return. By which device proceeding there is avoided that great inconvenience above-mentioned of giving liberty to Sheriffs, by arbitrary return to make and return whom they list, and upon the Parliament made, as now ever favour the parties in the judgment of the County or Borough that elected them.

Thus, in all humility, we have presented to your most excellent Majesty the grounds and reasons of our late action, but with no affliction, but guided by truth, warranted in our consciences, imitating precedents, maintaining our ancient privileges, honoring your excellent Majesty in all our services; to which in all loyalty and devotion we hold us in and over for ever, praying daily on the knees of our hearts, so the Majesty of the Almighty, that your Majesty and your polity may in all felicity reign over us and ours to the end of the world.

These reasons we set down and published to the House, Mr. Secretary Herbert was sent with message to the Lords, That the House had resolved of their answer to his Majesty, (in Sir Francis Goodman's case) and had set it down in writing, and that it should be sent to their Lordships before four of the clock in the afternoon; who immediately returned their Lordships answer, That they would be ready at that time in the Council-Chamber at Whitehall, with thirty of the Lords, to receive what then should be returned. Then were names thereunto to attend the delivery of the said reasons at the time and place aforesaid.

Edwin de ppe mortific.

THE House entering immediately into consultation what course was to be held with the Lords, as also falling into more length of deliberation, touching the bill of merchants, than were expected, fell some messengers to the Lords to excite their long tarrying, viz.

Sir Edward Hoby.
Sir Ro. Widdrington.
Sir Henry Knyvet.

Sir Francis Hastings.
Mr. Marley.

1.

This

This afternoon about five o'clock, the Committee appointed did attend to select the persons attended at the Council Chamber, according to appointment and order as both Houses, and they were delivered by Sir Francis Bacon, one of the Committee, with desire, That their Lordships would be punctual in the behalf of the House, for his Majesty's satisfaction.

Die Martini, viz. 4th de Aprilis, 1624.

SIR FRANCIS BACON having the day before delivered to the Lords in the Council Chamber of *Writings*, according to the direction of the House, their orders in writing, printed by the Committee, touching Sir Francis Goodwin's case, and the report of what passed at the time of his said delivery.

First, That though the Committee employed were a number specially designed and selected, yet that the Lords admitted all Barrells without distinction, that they offered it with to many, of their own speed and case in the business, so as that no one there, had precedence, but only the bill of it, considering that he had long respect to the weight of it, as they had not considered it to any bill of business, or other relation, but put it into writing for more convenient manner of their duty and respect to his Majesty's grace and favour: that in conclusion they prayed their Lordships, *first* they had more mercy, they would not rate with them for the King's imprisonment, and to deliver the writings on the hands of the Lord Chancellor, who receiving it, demanded, what they should send to the King, or first peruse it? To which was answered, That first it was the King's pleasure the should consider; they desired their Lordships would first peruse the Lord Chancellor's demand, whether they had Writure to signify, explain, or debate any doubt in question made upon the reading? To which it was said, They had no Writure. And for the writing was read, and no more done at that time.

Die Martini, viz. 5th de Aprilis, 1624.

MR. SPEAKER by a private commission attended the King this morning at eight o'clock, and there till ten.

Mr. Speaker came in his absence, by reason he was committed to attend upon his Majesty. And brought message from his Majesty to this effect: That the King had received a parchment from the House. Whether it were an absolute resolution, or relation to give him satisfaction, he knew not: He thought it was rather intended for his satisfaction. His Majesty protested, that he loved to have so the House as his loving and loyal subjects, and by the faith he did owe to God, he had as great a desire to maintain their privilege, as ever any Prince had, or as themselves. He had seen and considered of the manner and the matter, he had heard his Judges and Council; and that he was now deliberated in judgment. Therefore, for his further satisfaction, he desired, and commanded, as an absolute King, that there might be a conference between the House and the Judges; and that for that purpose there might be a select Committee of grave and learned persons out of the House: That his Council might be present, as at *Legatione de iure iuris*, but in respect not directly as both sides.

Upon this unexpected message there grew some amazement and silence. But at last one stood up and said: the Prince's command is like a thunder-bolt; his command upon our Allegiance like the roaring of a Lion. To his command there is no contradiction; but how, or in what manner we should now proceed to perform obedience, that will be the question.

Another answered, let us petition to his Majesty, that he will be pleased to be present, to hear, meditate, and judge the case himself. Whereupon Mr. Speaker proceeded in this question.

Quest. Whether to confer with the Judges in the presence of the King and Council?

Which was resolved in the affirmative.

And a select Committee presently named for the conference, viz.

Lawyers.	Gentlemen.
Mr. Sergeant Finch.	Sir George Cornew, Vice-Chamberlain to the Queen.
Mr. Sergeant Hildard.	Sir Francis Hayles.
Mr. Sergeant Leigh.	Sir Edward Hilly.
Mr. Sergeant Shirley.	Sir Robert Heath.
Mr. Sergeant Dashiell.	Sir Henry North.
Sir Thomas Hayles.	Sir John Scudell.
Sir Francis Bacon.	Sir George Murr.
Mr. Recorder of London.	Mr. Nathaniel Benn.
Mr. Grev.	Sir Edward England.
Mr. Lovelace Hild.	Sir William Flitell.
Mr. Francis Moore.	Sir Thomas Fitzwilliam.
Mr. Richard Martin.	Sir Roger Ald.
Mr. Winder.	Sir Robert Toftell.
Mr. Dyer.	Sir John Mansfield.
Mr. Fild.	Sir Edward Smith.
Sir Roger Willobon.	Sir Robert Cotton.
Sir Francis Yax.	
Mr. Doctor Tenn.	
Sir Daniel Down.	
Sir John Burrell.	

Their Committees were selected and appointed to confer with the Judges of the Law, touching the reasons of proceeding in Sir Francis Goodwin's case, in *Writings*, and delivered to his Majesty in the presence of the Lords of his Majesty's Council, according to his Highness's pleasure, signified by Mr. Speaker this day to the House.

It was further resolved and ordered by the House, (upon the motion that was made by Mr. Lovelace Hild) that the select Committee should signify upon the Solicitors, and explaining of the reasons, and answers delivered upon his Majesty; and not proceed to any other argument or answer, what occasion should move at the time of that debate.

Die Martini, viz. 11th de Aprilis, 1624.

Upon Adjournment.

SIR FRANCIS BACON was expelled, and called to make a report of the conference with the Judges in the presence of his Majesty, and the Lords of the Council: but he made excuse, saying, he was not warranted to make any report; and desired permission to return home: nevertheless, upon a question, he was constrained to make a report; and amidst thereupon made.

That the Committee might first assemble in the Court of Wards, and confer among themselves, and then the report be made.

Sir Francis Bacon, after the meeting of the Committee in the Court of Wards, reporteth what had passed in conference in the presence of his Majesty and his Council.

THE King said, He would be President himself. This attendance renewed the remembrance of the last, when we departed with such admiration. It was the voice of God in many, the good Spirit of God in the mouth of man. I do not say, the voice of God, but the voice of man. I am not one of His Majesty's Ministers. A curlew sign him that he had a curlew on him that sufficed it. We might say as was said to Solomon, We are glad, O King, that we give account to you, because you discern what is spoken.

We let pass no moment of time, until we had refreshed and set down an answer in writing, which we now had ready.

That instance we received a message from his Majesty by Mr. Speaker, of two parts: 1. The one Personal. 2. The other Royal. 3. That we were as dear unto him as the safety of his person, or the preservation of his polity. 4. Royal, that we should confer with his Judges, and that in the presence of himself and his Council. 5. That we determine now as King James "that we were now done like the Conqueror, in giving account of our Judgments." That we had no leisure, in all our proceedings, to encounter his Majesty, or to oppose his Honour or Predecessor.

This was spoken by way of preamble by him you employed.

How to report his Majesty's Speeches, he knew the eloquence of a King was inimitable.

He King addressed himself to him as departed by the House, and said, He would make three parts of what he had to say. The cause of the meeting was to draw to an end the difference in Sir Francis Goodwin's case.

If they requested his absence, he was ready; because he feared he might be thought interested, and so breed an inequality on their part.

He said, That he would not hold his Predecessor's or Honour, or receive any thing of any or all his subjects. That was his Majesty's duty.

That he would confirm and ratify all just Privileges. That his Honour and Antiquity As a King, Royalty: As King James, sweetly and kindly out of his good nature.

One point was, Whether we were a Court of Record, and had power to judge of Returns. As our Court had power, so had the Chancery; and that the Court that first had passed their judgment should not be controlled.

Upon a fumish, and upon the Sheriff's Return, there grew a difference. That there are two powers. 1. Permanent. The other, Transitory.

That the Chancery was a transitory Court in the eye of the Parliament during the time.

Whatsoever the Sheriff infers beyond the authority of his mandate, a nullity. The Parliament of England not to be bound by a Sheriff's Return.

That our Privileges were not in question. That it was private jealousies without any kernel or substance. "He granted it was a Court of Record, and a Judge of Returns." He moved, That neither Sir John Fortescue, nor Sir Francis Goodwin might have place; Sir John being placed, his Majesty did meet us half-way. That when there did arise a schism in the Chancery between a Pope and an Antipope, there could be no end of the difference until they were both put down.

Upon this Report, a motion was made, That it might be done by way of warrant; and therein to be inferred, That it was done at the request of the King; and was further said, (as anciently it hath been said) That we lose more at a Parliament than we gain at a Battle. That the authority of the Committee was only to signify what was agreed on by the House for answer, and that they had no authority to confer.

It was further moved by another, That we should proceed to take away our dilution, and to preserve our liberties; and said, that in this we had exceeded our commission; and that we had drawn upon us a note of infidelity and levity.

But the acclamation of the House, was, That it was testimony of our duty, and no levity.

So as the question was precisely made,

Quest. Whether Sir John Fortescue and Sir Francis Goodwin shall both be excluded, and a warrant for a new writ directed? And upon the question resolved, That a writ should issue for a new choice, and a warrant directed accordingly.

A motion made, That thanks should be presented by Mr. Speaker to his Majesty, for his presence and direction in this matter, and thereupon Ordered, That his Majesty's pleasure should be known, by Sir Roger Ald for their attendance accordingly.

Because it hath been conceived by some, that Sir Francis Goodwin being the Member specially intended, it were fit he should give testimony of his liking and obedience in this course, being dealt withal to that end, he writ his letter to Mr. Speaker, which, before this question made, he better satisfaction of the House, was read in these words.

"SIR,

I am heartily sorry to have been the least occasion either of question between his Majesty and that honourable House, or of interruption to those worthy and weighty causes, which by this time, in all like likelihood, had been in very good furtherance. wherefore, understanding very credibly, that it pleased his Majesty, when the Communes last attended him, to take conference with them for a third time and election for the Knights of the County of Wiltshire: I am so far from giving any impediment thereto, that contrariwise, I humbly desire his Majesty's direction in that behalf to be accomplished and performed. So praying you, according to such opportunity as will be manifested, to give furtherance thereto. I take my leave, and rest

Worthy, Sir, your

April, 1624.

Directed, To the Right Worshipful Sir Edward Phillips, Knight, Speaker of the Honourable Court of Parliament.

Yours, most assured

To be remembered,

FRA. GOODWIN."

Die Martini, viz. 12th de Aprilis.

A motion made, That Mr. Speaker, in behalf of the House, should pray accels to his Majesty, and present their humble thanks for his gracious

their presence and direction, upon the bearing of Sir Francis Goodwin's charge; which was alledged unto; and Sir Roger Ayles, a servant of his Majesty's Bed-chamber, and one of the Members of the House, was privately appointed to know his Majesty's pleasure; which he did accordingly; and returned, That his Majesty was willing to give them access to the gallery at Whitehall, at two o'clock in the afternoon, the same day. Thereupon a Committee was named to attend Mr. Speaker to the King, with a general warrant to all others that should be pleased to accompany them.

The Committee especially named were,

All the Privy-Council of the House.

Mr. George Carey, Vice-Chamberlain to the Queen.	Sir John Sefton.
The Lord Bacon.	Mr. Edward Seymour.
Sir John Hopton.	Sir Thomas Holcroft.
Sir Robert Overbridge.	Sir Henry North.
Sir William Fitzmaurice.	Sir Thomas Walsingham.
Sir Ralph Sandes.	Sir Thomas Bryson.
Mr. John Hales.	Sir Francis Boringham.
Sir John Sheffild.	Sir Robert Napier.
Sir Francis Hastings.	Sir Valentine Knightley.
Sir George Moore.	Sir George Carey.
Sir Robert Wingfield.	Master of the Chancery.
Sir William Kildgrew.	Sir Jerome Bowes.
Sir Francis Pytham.	Sir John Tipton.
Mr. Francis Gifford.	Sir John Lister.
Sir John Scrope.	Sir William Barclay.
Sir Richard Forney.	Sir Roger Ayles.
Mr. Toby Matreux.	Sir Robert Ayles.
Sir Thomas Ridway.	Mr. Dudley Carleton.
Sir Jonathan Trelawney.	Sir William M ^r . n.
	Sir George St. Paul.

Due Notice, viz. 13th de Aprilis, 1604.

MR. Speaker remeembred to the House the Effect of his message of thanks, delivered the last day in the name of the House to his Majesty, as also of his Majesty's answer, viz.

That he related to this House the humble and dutiful acceptance of what his Majesty had done, together with the humble thanks of the House for his zealous and paternal delivery of his Grace unto us, by his own mouth; what wonder they conceived in his Judgment, what Joy in his Grace, what comfort they had in his Justice, what approbation they made of his Prudence, and what obedience they yielded to his Power and Pleasure.

That his detestation gave all men satisfaction. That they were determined to pursue the course he had prescribed. That now they were contented, he would be pleased to receive a representation of the humble thanks and service of the House.

His Majesty answered, That upon this second access, he was forced to remember what he had said before. That this question was unhappily cast upon him, for he earned as great a respect to our privileges as ever any Prince did; he was no ground-searcher; he was of the mind that our privileges were his Strength; that he thought the ground of our proceeding

was our not understanding that he had intermeddled before we had decided; that he thought also we had no wilful purpose to derogate any thing from him, for our answer was grave, dutiful, and obedient answer.

But as the devil had unhappily cast this question between them, so he saw God had turned it to two good ends and purposes.

1. One, That he knew, and had appeared our loyalty.

2. Another; That he had so good an occasion to make testimony of his bounty and grace.

That as we came to give him thanks, so did he redouble his thanks to us. That he had rather be a King of his Subjects, than to be a king of many kingdoms.

The second part of his speech directed to the Lords and Us.

That this Parliament was not like to be long, that we would treat of such matters as must concern the Commonwealth; and the bill of any thing, that concerned himself.

Three main businesses in our hands.

1. The Union.
2. Sundry Publick and Commonwealthe-Bills.
3. Matters of Religion, and reformation of Ecclesiastical Discipline.

For the Union, that it might be now prepared, and presented the next Session.

That Union, which with the loss of much blood could never be brought to pass, as now it is. That the better to bring it to pass, we should be in affections united.

That we should best with all care proceed in such laws as concern the general peace.

That all Heresies and Schisms might be rooted out, and care taken to plant and settle God's true Religion and Discipline in the Church.

That this with above all things was at his death to leave,

1. One Worshipping to God.
One Kingdom entirely governed.
One Uniformity in Laws.

Lastly, That his occasion were infinite, and much beyond those of his Predecessors; and therefore that in this Parliament we would not care from him that which we had yielded to others.

That in his afflictions he was always inferior to others, not in his desire to cure us.

The Warrant for a new Election of a Knight for Bucks, read and allowed in this form:

Whereas the Right Honourable Sir John Fortescue Knight, Chancellor of his Majesty's Duchy of Lancaster, and Sir Francis Goodwin Knight, have been severally elected and returned Knights of the Shire for the County of Bucks, to serve in this present Parliament: upon deliberate consultation, and free choice of the said knights serving the Commonalty of Parliament, it is the Duty directed and Required by the said House, That a Writ be forthwith awarded for a new Election of another Knight for the said Shire: And this shall be your Warrant.

Directed, To my very loving Friends,
Sir George Caplin Knight, Clerk of
the Crown, in his Majesty's High
Court of Chancery.

XI. The Proceeds and Trial of ROBERT LOGAN, of Reshairig, for High-Treason, in conspiring with John Earl of Gowrie, to murder King James I. June 1604. 7 Jac 1.

IN the year 1604, the Earl of Dunbar, walking in his own Garden, and conversing with a country Gentleman, who lived near the place, falling accidentally to discourse on the matter of *Gowrie's* forfeiture; this Gentleman told the Earl, that he being lately in company with one Murray, a Nephew, who lived in *Edinburgh*, who was ordinarily employ'd in the Laird of *Reshairig's* service as a Notary and Trustee, and who was long acquainted with this Gentleman who was speaking to the Earl, told the Earl, that this *Speyer* had told him things concerning that Treason which he had never heard before; but that he had never told it, so long as their concerns were alive. The Earl was curious to have the information, which the Gentleman told him, and was in doubt:

That amongst Robert Logan of *Reshairig*, then dead, was a Co-partner and Converser with the Earl of *Gowrie*, and his brother *John Alexander*, in all due affair; and that *Speyer* had several letters, say lying by him, which he had found amongst *Reshairig's* papers, and some papers belonging to one, commonly call'd *Laird Bess*, the principal confidant of any man that *Reshairig* had, and who was also intimate with *Speyer* the Notary.

Whereupon the Earl of Dunbar acquainted the King's Advocate, and *Speyer* was taken and carried unto *Edinburgh*; who, before several Lords of the Council, did, with great remorse of conscience, acknowledge,

That he knew principally that *Robert Logan*, late of *Reshairig*, was privy to, and upon the full knowledge of *Gowrie's* treasonable conspiracy; and for the greater assurance of his knowledge, deposed, That he knew, that there were divers letters unaltered between them, about the treasonable purposes aforesaid, in the beginning of the month of July 1604; which Letters, *James Bess*, called *Laird Bess*, servant to *Reshairig* (who was employ'd mediator between them, and grew to it that *Speyer* had been employ'd, and secured the same to *Speyer*, in the place of *Reshairig*).

And deposed, That he did address (i.e. Read) quietly from *James Bess*, the principal letter written by *Reshairig* to the Earl of *Gowrie*, which *Bess* brought back from the Earl of *Gowrie* (as was the custom amongst them at that time), and that when *James Bess* employed him (*Speyer*) to deliver over papers; that he did keep the letter, and that it was yet in his possession, and was in his chest, among his writings, which he left it when he was taken; (and accordingly, the letter was found there by the Sheriff, who was ordered by Sir William Hare, Lord-Judge of Scotland,

to seize the said chest, and search for this letter, which was found, and delivered to the King's Advocate).

Whereupon, the King's Advocate produced the summons of Treason, which was read by warrant under the Seal, on the 29th of February, 1604; against all the defendants and others concerned, to compare before our Sovereign Lord, or his Commissioners, and the Estates of Parliament, and Justice-General, on the 12th day of April, 1604, to answer, &c. And likewise produced the verifications of the executors, which were sworn to, by the Herald, Messengers and Witnesses, in plain Parliament; all which are contained at length in the Records of Parliament; as are also the letters of relaxation and execution thereupon, relating Robert Logan, eldest son to amongst Robert Logan the accused, from the home, and all penes thereby, which relaxations were registered in publick Records before the day of comparance; and then the Lord Advocates produced for verifying of the letter and writings, the principal letters, and did put them in the Clerk Register's hands (where they lie among the publick Records); to likewise the deposition of the witnesses, taken by the Lords of the Articles, in common form.

All which being produced in presence of his Majesty's Commissioners, and the Estates of Parliament, upon the day of 1604, the defendants cited, and not comparing; the Advocate desired the Estates declaration on the relevancy. The tract extracts whereof are as follow;.

SIR Thomas Huestler of Bonnie, Knight, Advocate to our Sovereign Lord, in his Highness's name, for proving of the points of the said summons, and reason and cause of Treason and Life Majesty continued therein, appeared divers sufficient bills, all sworn and fabricated by the said amongst Laird of *Reshairig*. All the verifications of the witnesses, examined before the Lords of Articles before; and before the Lords of Secret Council, George Speyer's depositions, and conviction and execution to the death, for the same cause of Treason as *Gowrie*; together with divers writs and other prohibitions, which were preklly produced, before the said Estates, by the said Lord Advocate, on our Sovereign Lord's name, for proving of the said summons of Treason, and the reason and cause of Life Majesty continued therein; of which said reason bills and depositions produced by the said Advocate to our Sovereign Lord's name, for proving the said summons of Treason,

Cloud arising from my Lord's, wearying and tiring his Majesty with infinite supplications in this case. And now, my Lords, as if all his former craft had been lost, he presents it to me more in tears, or looks upon, but compelling his undigested thoughts into a libel, through the volume was put in quarto, delivers it to the King on Good-Friday last.

And his most princely Majesty, having it thrust up with most bitter railing speeches against a great and worthy a Judge, hath of himself commanded me this day to sit forth and manifest his fault unto your Lordships, that he might receive deserved punishment.

In this Fob's pamphlet (for this Book is bound in Fob's) he set forth his cause, the Fob of this day; wherein Mr. Wraynham saith, he had two Decrees in the first Lord-Chancellor's time, both under the Great Seal, and yet both are altered since the last Lord-Chancellor's death, and cancelled by this Lord-Chancellor in a perjurious manner; and first, without cause. Secondly, without matter. Thirdly, without any legal proceeding. Fourthly, without process. Fifthly, upon the Party's bare suggestion; and Sixthly, without cause. Mr. Wraynham is answer. And of this, my Lords, faithfully he imagines a threefold end: First, to reward *Fob's* fraud and perjury. Secondly, to punish his unjust Proceedings, and to reel things out of *Fob's* face, and Thirdly, to condemn Wraynham's estate; and thus my Lord was therein led by the rule of his own justice. Yet he stayed not here, but, as if he would set upon against my Lord, he aggravates my Lord's Injustice to be worse than Murder; saying, That in his sentence, he hath devoted him and his whole family. And secondly, as if one should follow upon another, he doubles it upon my Lord, and, in a manner, plainly gives my Lord the lie. And bearing that my Lord had said first in his Majesty in this case, he saith in his book, that he thus did it unjustly, and, to maintain it, speak untrue, adding falsehood to my Lord's Injustice; saying in his Book, it is given out by my Lord hath begged Wraynham's pardon, which, *say* it be the case of a gentle heart, yet argues a guilty conscience, and is but my Lord's cunning to avoid the hearing of the cause. And as if my Lord should know his own difficulty to be lost, and was unwilling to have it searched or discovered, he charged my Lord with flattery, and tells him that he hath polluted apparel with gold, pearls, and other such things; and that the height of authority makes him perjure. And to make this yet more sharp, he argues, that my Lord, to maintain this, which secret means, whereby the unbelief of his actions may not be seen, and to avoid censure; and, as if my Lord himself says, still in Magick, he saith, that my Lord hath used a report from hell of the late Master of the Rolls, which was consulted before his face, and damned before his death; in content to scandalize the living, but to far, my Lords, doth his malice overlook his wisdom, that he doth not cease, with his malice, to drag the dead out of their graves again. When it is well known unto your Lordships, that the Master of the Rolls was a man of great understanding, great piety, great experience, great dexterity, and of great integrity; yet, because this cause fell by casualty into his hands, by reverence since the last Lord-Chancellor, and he followed not this man's honour in his report, therefore he brands him with these aspersions, and adds to the rest, that he grounded this report upon Wraynham, that is, upon the most innocent, most obedient, and apparent upright. How can you but think, my Lords, that this Gentleman's head is full of poison, seeing it fell out so fall into into his pen, trampling upon the dead? And thus is an addition unto his punishment, the injury of him that is dead, because the dead yet lives, wherein his Justice is scandalized.

And now, my Lords, that you may the more detect his flanders, whereby he goes about to slander my Lord-Chancellor's Justice, give me leave to open the plain and even way, wherein this great Judge walks in this particular case. The question in Chancery at first was two, between Wraynham and Fob, upon each side, either against the other: Wraynham complains of trust broken, whereby he was defrauded, Fob upon a debt of a private reckoning demanded by Wraynham. Upon proof of both these, it was by itself altered, that Fob should assign the Lease made unto him upon trust, and Wraynham should pay the Money, so well proved to be due to Fob: by which means the Decree had, which is the last Decree.

But Mr. Wraynham, wisely supposing that Mr. Fob had intended his Lease, and if it should be assigned to him according to the Decree, it would be merely illusory, he exhibits a new bill to discover what change, as on what force, Fob had charged the land with incumbrances. And Mr. Wraynham finding the circumstances greater, upon the reference of the Lord-Chancellor to the Master of the Rolls, a bargain was mediated between them, that Fob should hold the Lease in question, and Wraynham should have after the rate of twelve years purchase, and to the both assented: so that your Lordships see that the first Decree was not cancelled by my Lord Chancellor, but discharged by himself, for by the Decree he might have had the Lease; but he consented himself with twelve years purchase.

After this, the question grew upon the value, which being referred to the last Master of the Rolls, who the value was at first, before the improvement, when it was in Lease to one *Harley*, and there, upon proof and oath of divers Witnesses, the Master of the Rolls returned and certified the constant pendage of the Lease to be worth 200*l.* by the year; whereupon Wraynham was to have it at twelve years purchase, amounting to 2400*l.* Mr. Wraynham seeing the land was much improved by a demolition made against the sea and other means, whereby the nature of the land was altered, and the profit much raised, moves the Lord-Chancellor into a decree from the bargain, but saith, that the Value remained was not the true value, for the land was worth 200*l.* by the year, and yet *Harley* retained it in his hands, 2000 Marks which he owed to Fob, and moreover lost five-hundred Pounds old Money; whereby now Mr. Wraynham had received his 2400*l.* in his Purse. And when he had himself thus received, having received and paid, so that which cost but 200*l.* now he flung upon him, and moves the Lord-Chancellor by a commission to refer the value to two Justices, that had been Farmers to the land, that they might certify the true value after the use, but *L'Estrange Abbotson*, who certifies the value 318*l.* yearly; and the other, *Se. Henry Salomon*, certifies the value to be 306*l.* yearly; and my Lord-Chancellor strikes between them, and says 312*l.* So here is a difference of values, the first of 200*l.* upon the first Decree, and so at 312*l.* yearly, without oath. The first value is at

the time of *Harley's* Lease, the second is at the time of the commission granted, and after improvement, which, your Lordships well know in your wisdom, the difference between had been, and may even be so. The last Lord-Chancellor, according to the estimating value of 200*l.* a year, assessed the increase to Wraynham's bargain, and that he should have it, as if the lands were worth 200*l.* per ann. So that now, the 2400*l.* in his purse, had been worth 1680*l.* assessed above 200*l.* Mr. Fob finding this assessed to the bargain, and that he should be paid to pay the said purchase, and that he had choice either to pay the Money, or to part with the Lease, Fob moved the Court, that he might give up the Lease, and defend his first 2000 Marks with damages, which Wraynham assented to, so that he might have satisfaction of that which Fob had received of the profits of the land. Upon this, upon contest of parties, it was again decreed (and this is the second Decree, which Wraynham is now upon this upon, not being an absolute and positive Decree, but qualified with this). First, that Wraynham should pay the 2400*l.* with damages to Fob; and, secondly, that Wraynham should have satisfaction of such profits as Mr. Fob had received out of the land.

Mr. Wraynham moves with this second Decree, being willing to have the value of the land, not according as Fob had received, but what he might have recovered.

Now my Lord-Chancellor finding the case thus standing, thought it no injustice against Wraynham's own offer, not that Fob should lose his damages, having forborne 2400*l.* ten years, nor that Wraynham should be allowed more defalcation than Fob could receive, because he was tied to a dry rent; and finding that Wraynham was neither willing nor able to retain the 2400*l.* with damages unto Fob, my Lord-Chancellor thought fit to uphold the bargain, according to the first certificate of the Master of the Rolls appraised; because the last certificate without oath, was not so equal in the balance of Justice, as that with oath, certified by the Master of the Rolls, upon the examination of divers Witnesses.

Now, my good Lords, if this case stands thus, what Injustice is there committed? What unkindness is there in this action? or, what cause is there for my Lord-Chancellor to hide himself, that this Gentleman should in this case decline against him this day? If it were, my Lords, to make my Lord-Chancellor, for fear, to take off his hand, he will let the World know he is more constant and courageous in the point of justice, than that which he did so justly, so lightly to revoke. And if it were to this end, to make my Lord-Chancellor to dispute with Mr. Wraynham, I am to let you know from his Majesty, he will not let him forgo, nor forget his place, so much as to enter into debate with Mr. Wraynham, knowing that it were not let for him to stand to wrangle or wrangle with Mr. Wraynham, but rather to despise to mean an adversary.

My Lords, you know, that wife and just men may walk the same way, though not the same path; there are divers courses and divers ways to the same end, Justice for Justice sake, they are both to be honoured, neither to be blamed. For, my Lords, if Judges should be traduced as unjust, because they differ in opinion, they should have thankless offices, Justice in the Harmony of Heaven, but *Logic* determines all *Logic* officers. Though this Gentleman hath feared hard to lead and dare to high; I judge, yet the razor of his tongue cannot charge him that any thing came between God and his own conscience, but the merits of the cause, though it be certainly true, whilst a man carries this flesh about him, his judgments and faculties will be imperfect. Yet, my Lords, I know that my Lord is the branch of such a tree, who, though he blossom'd fall, yet took more sap from the root than any of the rest: the sun living in the memory of us worthy a father, the father living in the memory of us virtuous a son, who may say, as *Agrippa* once said to his father, I obey you in judging nothing contrary to law.

I am glad this Gentleman is so asked of excuse, yet heartily sorry his defamation is so foul, as to draw such a smart of punishment as this will be upon him, and here if necessity (the true defender of man's wickedness) should step in, I answer, Though necessity break through all laws, yet being into the face of Justice, it can be broken by Justice; else to Justice can be false, nor no Court keep itself from infamy.

It is well, my Lords, that this fault falls out but seldom; for being so infrequent when it happens, it cannot be foul. It is a pernicious example, for by this, when scandals are presented instead of complaints, that is but to stir divisions between the King and his great Magistrates, to discourage Judges, and vitiate Justice in the sight and mouth of all the people.

I therefore I beseech your Lordships to pardon me, if I be too long, and farther now to show your Lordships what this Court, in like cases, hath done.

In the second year of his Majesty's reign, when *Se. Edward Cole*, according to his place, entered against *Forte* in this Court, *se. tenor*, not petitioning his Majesty against the last Lord-Chancellor, for granting an exception for slaying of a suit at the Common Law, which your Lordships know how necessary it is) he being convicted upon his own confession, received a sharp censure. I will conclude with this one, and I shall deliver your Lordships, in this place, so low it read, and then do I humble because your Lordships to show the Gentleman at the Bar, either for no defence, or excuse.

Then Wraynham's Examinations were read in this Book and Enroll.

Then he was charged with these words following, in the end of his Epistle to his Majesty: "He that judges unjustly, must, to maintain it, speak untruly; and the height of authority maketh men to profess." Also, in facing up of his Majesty resolves what the Master of the Rolls was faulty, he said, First, the Master of the Rolls had omitted many of his material points. Secondly, he flouted off other faces. Thirdly, that he was not more without the equity of his cause. Fourthly, That he did falsify one Fob's process. And, that he grounded the report upon the deposition of Witnesses that were absent, untruly, and mere impertinent. And, lastly, as if the report had been condemned and damned before to the pet of hell, he said it was ruled as *de injuria*.

In his Epistle to his Majesty, he is charged with these words:

"I understood my Lord-Chancellor hath begged my pardon: it is not worthy the show of a great heart, but unworthy it argueth a guilty conscience; otherwise, at first I had been thought guilty, and had I not then have been proceeded with in Majesty for me, it and been so."

an argument of an indulgent nature, but in his opinion where there is no
 mercy, was manifestly done. I am his grace, and I do not in any words
 say, or in that of justice, or in goods, I will not with him with my
 grace. And the other, as it is in me to hear, or to be, or to be, or to be,
 I bid him his grace, and infinitely depletes the judgment of his
 Majesty.

And in the conclusion of his Epistle were these words: "I do sit to
 judge at your gates, as I shall due to stand in great and eminent a
 judge, unto to great and wise a King."

"It be should not defer to reward to Father for their land and per-
 juries, I know not why he should have had all out of your."

My Lord, with this his last cunning and rheumatic, hath polluted his
 unjust proceedings against me; for my Lord's grace and promotion
 upon as his speech is wanting in my writing, out of which a cloudy
 mist will rise to hide the verity of your princely Judgments.

"I could never say by what reason or words his Majesty hath con-
 sidered his dealings to excuse himself unto your Majesty, understanding
 only a piece, and not the whole from your Majesty. This last move
 and humbly to beseech your Majesty to save my wife and children,
 and out of your princely justice to appoint a day of hearing, whereby
 these shall appear unto your Majesty, as well the innocency of my affi-
 rmations, as the unkindness of his Lordship's abuse. For I never
 sought contrary, but openly, and sometimes in my Lord's presence, have
 pointed and complained of my wrongs, and desire a public hearing be-
 fore your Majesty, which the greatest subject dare not do without
 your grace and justice."

And in another place, *Wharpham* faith, "My Lord Chancellor proves
 nothing by record, nor delivers any thing by writing, to answer the
 things objected against him, but would hide himself from the eyes of
 your Majesty's justice."

His Majesty thus, though he receive petitions from his subjects against
 his highest Justice, yet he will have his Judges know, that they are sub-
 ject to a account only, and to some else upon earth.

His Majesty received this petition on *Good-Friday* last, in which this
 Gentleman hath far exceeded the measure of an humble complaint, and
 sent a most appeal to your Lordships against him.

Then was *Farris*'s precedent read, bearing date *Mercurii decimo quarto*
Novembris, anno domini huiusmodi, folio 1.

And likewise *Farris*'s two last petitions against my Lord-Chancellor,
 touching which reference is had. And the Lords asked Mr. *Wharpham*
 what he could say for himself.

Mr. WRAYNHAM.

Right Honourable, and my very good Lords,
 FROM a man to perplexed with so many miseries, what can be ex-
 pected? and what marvel, if I should foster, or might let fall any
 speech that might seem uncomely?

My Lords, I know not how to behave myself, I will not willingly of-
 fend any, but especially the King's most excellent Majesty; yet nature
 commands me to defend myself, for it cannot be thought he can be faithful
 to another, that is not so to himself. And therefore I humbly desire,
 that what I offer in extenuation, or defence, that neither the assent that
 bear it, nor your Lordships, which are to judge of it, would take it offe-
 nsive.

My Lord confideth of three parts.

First, An Epistle to his Majesty.
*Secondly, The body of the book, which relateth the truth of all the pro-
 ceedings.*

And, Thirdly, a conclusive speech in the nature of an epilogue.

Touching the body of the book, and the truth of the cause, I com-
 mend it not now called in question, for I think your Lordships will not
 enter into the particular; but because it hath pleased *Mr. Attorney* to
 speak something of it, I will not be silent.

My accusations, my Lord, are set forth in two things: *First*, that the
 complaint is of the Right-Honourable the Lord-Chancellor. *Secondly*,
 That it is in better and unrevoked terms.

For the *first*, I must say for succour and protection our dear Lord
 Sovereign Lord the King; for it pleased his Majesty, sitting here in the
 sacred Seat of Justice, to declare, that if any were wronged in point of
 Justice, in what they might come and have relief; and for proof thereof,
 I humbly desire your Lordships to hear me read a sentence or two in his
 Majesty's Book.

"For, *first* he, if any were wronged, their complaint should have come
 unto me, none of you but will confess you have a King of a reason-
 able understanding." &c.

And in another place, "Why then should you spare to complain unto
 me, being the high-way; therefore as you come going to the Law for
 Justice, &c."

"But if you find bribery or corruption, then come boldly; but be-
 ware of the justice of your cause."

First, therefore, in his Majesty's opinion, a man may be wronged in a
 Court of Justice.

Secondly, In that case, his Majesty is not only willing to receive a com-
 plaint, but to reform what is amiss: so that his Majesty publishing this
 much to all his Subjects, I hope your Lordships will not conceive that
 hardly to complain is a fault; especially finding that his Majesty faith,
 "Why do you spare to complain?"

The *second* part of my accusation is, because I have used unrevoked
 and bitter terms.

First, I divided the collections objected against me into two parts.

(1.) Into two sentences, which *Mr. Attorney* hath endeavoured to fa-
 vor on the Lord-Chancellor by inference.

(2.) Into words, applied to his Lordship.

My Lords, Touching the *first*, I hope general speeches shall have no
 such contradiction.

In the 16th *Psalm*, the Prophet faith of himself, *I have said in a fury,*
all men are liars. And in the 24th *Psalm* it is said of all men, *They have*
all one out of the way, and are abominable; there is none that doeth good, nor
is there any. And in the Epistle to the *Romans*, it is said, *Let God be just,*
and every man a liar. And again it is said in Scripture, *That the passion of Ape is*
under their lips, and their throats turn every word into a curse. And yet was ne-
 ver heard, that any of the Prophets and Apostles (godly men) found fault
 with David, saying, *For I have said in a*

new day, and at midnight, because they would have persecuted me,
therefore, my Lord, I have said in a

new day, and at midnight, because they would have persecuted me,
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for the which the said *Wright* was audited, convicted, fined, and censured in the King's Bench.

By *J. P. B.* *Baron* of the *Exchequer* and *Honourable* *Henry*, who complained to King's Bench, III. 4. That *Sir William* *Baron*, Chief-Justice, had awarded an advice contrary to law. And the King sent it to the Judges, whereupon *Henry* was imprisoned, judged, fined, and pardoned; yet he had not remedy but in Petition.

The Justice hath made a sharp law against such an open scandalous news of the Chancellor, Justice of the King's Bench, &c. And because divers were punished for daunders, in petitions to his Majesty; therefore, 13 R. II. *Per. 2. an. 25.* the Commons desired they might not be troubled for any matter that should be contained in a petition to the King; and the King answered, "Let every man bring an, or to be with law and reason."

Wright objected a place of 20 years for his Majesty, where the *Parliament* hath, *I have said in my life, that all were here.* The next is, *Do as you will; for my own sake, that all were here.* The next is, *Do as you will; for my own sake, that all were here.*

And another thing that *Wright* offered in his defence, was the King's words, when he said, in his *Book*, *that is in law.* But of what I Of corruption? See *Baron* in *Re. Per. 24 R. II. Per. 3. an. 15.* If any man corrupts with his *Baron*, *Baron* is, *that is in law.* It is an act in the Rolls of the Parliament de *plac.* that the great de *de* was a counsel of bribery, and put from his place; and Cardinal *Wolsey* was convicted of a foul corruption.

But if a man, according to sincerity, give judgment, though he differ from another Judge, this is no injustice. Famous *Dyer* gave judgment in the Common-Pleas, and this was revealed in the King's Bench; yet he discharged his conscience; and also: it was afterwards reversed, yet it was no injustice. The like instance might be made of *Sir Christopher* *Wright*, and others. Now, in this case, my Lord-Chancellor that is living, differs from the Lord-Chancellor that is dead. This is not strange, it hath been seen, and even will be; but if a Judge's conscience be soiled and murthered with corruption, then all is naught.

The King hath the Pleas of the Crown, and upon every Judgment one of the parties is angry and displeased: But this must not presently produce a new meaning, for that will hinder all other business. For I will put you against one between a Nobleman here, and divers other Noblemen that were troubled by the Counts of *Southampton*, who were all Plaintiffs, and *Sir John* *Flood* Defendant; and this was *Much* 47 of 43 *Ed.* The man that was so contented in the cause, was upon an exception of a *Manor* (as I remember) in the *Exchequer* of the *deci*, which my Lord-Chancellor then thought good. And therefore decreed, "That my Lady" of *Southampton* should have all." Whereupon *Sir John* *Flood* petitioned Queen Elizabeth, that she should refer the examination of the Decree to some of the Judges; but the Queen would never refer any thing to those that were named unto her, but she referred it to two other Judges not named in the petition, who attended my Lord-Chancellor; and they then referred it against the Decree, and my Lord reversed his own Decree.

I know I have held your Lordships long; yet I cannot tell, in these cruel days, whether men will be foolish, which hath made me longer than I would have been. Therefore, to conclude, I agree, in all things, with the sentence given in *Pier's* case of a *Yan*.

Sir Giles *Grenell*, Chancellor of the *Exchequer*. This Court hath no intent to discourage the meanest subject of his lawful appeal upon his Prince; for that were to diminish the people of law, and the King of the intelligence of the oppression that might fall upon his people.

But this case I suppose not to be within the first. The matter is such case, as that a review of an inferior sentence of a superior Magistrate, my Lord-Chancellor of *England*; and that before he be heard, making the King his speedy execution.

But examine the nature of these accusations, and you shall find them more scandalous, and impolitic; as breaking Decrees, rewarding frauds and perjuries, palliating oppressions with greatness, wit, and eloquence.

Why, my Lord, if this liberty should spread, then I desire the indifferent brester to see in what a miserable case the subject stands, when the right of every good man shall stand in the malignity, and unequal nature of every turbulent spirit? And, my Lords the Judges, in what a case stand they, if by such clamours every delinquent shall be made Judge over them? and what privilege shall the King my Master have? For if this humour should take a little head, will it not carry both him and Justice into the field? And therefore I conclude, that this is to be punished; and is not a petition, but a presumptuous challenge, and of so far a work-nature beyond duty, as honour and universal Justice is beyond particular right: And therefore I agree with him that went before me, leaving his good parts to mercy, and his ill parts to the censure of *Pier's* case.

Lord Chief-Baron, *Sir Laurence* *Tayford*. This cause is a cause of a high nature, being a scandal of a great and principal Officer of the Kingdom, and of one that is an high and eminent person, which scandal is set forth in this *Book*, which certainly I cannot call a petition; for the petitioner hath professed too far, that it is a plain revile of a Decree. Every man knoweth, that the Chancellor hath the keeping of the Great-Seal, whereby is managed Mercy and Justice; and if this great person be troubled that is thus abused by every offender, how intolerable will this mischief be?

I doubt not but that by a right way, you may, by a petition in an humble course, and humble manner, desire his Majesty that he would be pleased to renew a sentence in Chancery, or else grant a commission to others to review the cause. But doth this man abuse this course? No, but he will be his own Judge, sentencing his own cause. I can call this *Book* no better, than a scandalous and malicious libel against the Lord-Chancellor; and that not without great bitterness, as I have heard.

First, he taketh him with injustice then mark the circumstances, he saith, "My Lord-Chancellor hath revealed the Decree, without cause, without law matter, without legal proceeding, without precedent, and upon a bare suggestion."

Then he goeth further, saying, "Injustice is worse than murder; for this Decree hath deserved him and his whole family."

And, not content with this, charged him with oppression, and palliating it with greatness, wit, and eloquence; that which a greater and heavier scandal cannot be.

You shall not be barred of access to his Majesty; but that by a petition you may desire to have a Decree reversed, and that his Majesty would grant a commission to review it. But no things shall be done I will, and then the law puts us, that it is to be against a Nobleman. *Sir Richard* *Croft* did sue an action for *laying* of false deeds against the Lord *Beauchamp*, whereupon my Lord-Chancellor said an action upon the Statute de *Scand. Magnae*. But that would be no action, because it was done legally for a man may *lay* a law. Write such a law, by the title of the said *Writ*; but be well aware that he prove it well, or else he shall be well fined in the same Court. But much more shall he deserve a *de*, if he hold it without *Writ*, or without record or proof, as *Wright* hath done.

And therefore, be sure I must be short, I think him fully worthy of the censure to be given upon, in all points.

Lord *Hobart*, Chief-Justice of the Common-Pleas. *Mr. Attorney* hath very worthily and like himself, according to his place, brought this man into the Court, to give answer for the grievous and most outrageous offence that of this kind hath been committed; in which case, I will first tell you, what I do not question, as I then what I do question.

For the first, Petitions may be exhibited to the King without controversy; nay, in some cases they must be exhibited; and God forbid, that any man's way should be locked up, or that any Subject should be barred of access to his Majesty, for when appeals fall, and when ordinary remedy is wanting, so that there is no Judge above the highest Judge, yet, you may still refer unto your Sovereign for extreme remedy: this is proper to a King, *Quia capere, si capere possit*; for it is an inherent quality to his Crown. So that without controversy a man may petition against a sentence; for God forbid, that we that are Judges, should draw that privilege to ourselves, to give sentence, and not to hear it examined. But it is true, it must be presented as a supplication, and you must formally to work; ordinarily you must go to the proper Courts of Justice; if that fail, the extraordinary course is open by the King; and this is no more than to draw to his Majesty, how you and yourself grieved, and then send the cause and fact to the King's wisdom.

But now let what this man hath done, he hath made neither the matter nor form of a petition.

First, for matter, he perverts, that is not saying that my Lord-Chancellor hath expressly intimated two Decrees, when he hath done nothing, only croaked in order, thus which, there is nothing more common, for they are but intoleration, and not definition.

And for form, this is no Petition, no book, as he would call it, but an express, peremptory and audacious libel. Then the manner offends yet more; for whereas a supplication imports, that a man should speak it upon his knees, for as it is in some *Requis*, men attempt nothing against law, but they must do it with a rope about their necks: so that he that goeth about to attempt any thing against a Decree, he doth it with a rope of the King's censure about his neck; but mark the courage of this man, how infinitely he proceeds in this case!

First, for the King, as hath been well observed, he hath, *offertur Rex*, as if he should bid the King arise and take revenge.

Therefore for the Decree, he saith, that the foundation of it came from hell; if that be so, then this sentence must needs be belial, when he falls upon a poor man, the Master of the Rolls: I call him poor man, because he is not living to answer for himself, but yet he was a worthy Minister of Justice, (for I had much cause to know him) and he was of as much deservency and integrity, as ever man that sat in his place, and I believe the Chancery will find out of such a man. But not content with this, he scorns my Lord-Chancellor's courtesy, and carries himself, as if he would trample all under foot.

So much for the manner: as for the matter, it is odious; the person with whom he hath done, is the principal Officer and Magistrate of Justice in the Kingdom, one that hath the nomination of all the Judges of Peace, and the Principal that carries all the Sheriff's one that keeps and carries the Seal, and his chief Judge in the Court, and sole Judge in the Chancery. And shall we think that this man is brought and held to Corruption, or Injustice, or Murder? What more words as the King's dishonour, then that he should place in the Judicature such an unworthy man? a man infinitely the more wronged, because he deserves his place, as well as any man that went before him; and yet his last Predecessor was wiser, excellent, and deserved no small commendations. But *Wright* *London*, as a man hath honours both toward the living and the dead; wherefore, there is a just and tribune due to the Master of the Rolls deceased. I would have mention made of it in the Decree, and with that addition to the sentence, I concur in all things with the President of the Court.

Sir Edward *Mosses*, Lord Chief-Justice. My Lord, it is a true saying, *Judicium non redditur nisi in veritate*. For I yet never saw any man fit down himself with a sentence that went against him.

I would not so far have blamed *Wright* as he is to have censured him for complaining to the King; yet the refractory I find in law, which any man may see in *King* *Edgar's* laws. "Let no man complain to the King in matters of variance, except he cannot have right at home, or that right be too heavy for him. Then let him complain to the King." Whereby it is meant, that if the laws be so that he shall complain as a Court of Equity to the King himself. Thus, to complain is not easy to any man, for all Justice comes from the King, and though he distribute his Justice to be ministered in several Courts, yet the primitive power resides still in his person. Therefore, to the Justice of his Majesty may any Subject have resort; but this must be humbly as a Petitioner, not as *Mr. Wright* hath done here, who is not a petitioner, but a censurer; and doth not complain, but grossly rails upon a high Judge.

Can you, *Mr. Wright*, charge your Judge with corruption, through fear or affection? (for I make them both alike.) Say not the chief Judge nor highest Counsellors I say, have us not, wherever you can take us. But a judgment is pronounced from the faculty of our consciences, and war-

ended

Wherein, let me add for my last, the manner of presenting it, the wrong itself; and then withal the defence was made, which when I heard it, I was more offended than with the Book itself; and I may justly make it a question, whether he were more foolish in writing it, or more vain in defending it?

His defence is a two-fold necessity: first, a necessity to induce the King to hear him; like *disloyal*, that would needs for *Talbot's* fields on fire, to get his oil.

The other, a necessity of *Estate*, proceeding out of the Laws of necessity; *Gravelius* first *manifeste* *injustitia*. One part of speech was general, that he meant not my Lord-Chancellor; but in the general there is a *major*, and in the particular there is the application; and then every man can make the conclusion, as hath been well observed by Sir *Edward Coke*.

You are a man of a private and private spirit, and if you know not of what spirit you are, I can teach you: I say, of that spirit, that you compare yourself with *Agathos* and *Prophetas*, and you multiply *Scriptures*; your aim is *angel's* *inspiration*, to show a difference between *living* your passion, and *deliberation*. It comes fully home into your own breast, *et pulchrum* *prope* *guttur* *est* *in*.

The best part of this answer, was the last, and I would it had been all in all; and so I agree with the sentence given before me.

Vilfridus Walsingham. I am forry a man should deserve to great a censure as this man's fault will make; yet I am very glad in this bold and quick-sighted age, that other men, by his example, may take heed not to exceed the bounds of modesty.

This humour, it smothereth self-love (which believes nothing but itself) hath been that, that hath bred this Gentleman up to unmannery, that he takes care to accuse the highest and greatest Judge of the Kingdom, of Oppression, Injustice, Murder, nay, of any thing; which is not only spoken by it a tongue, but aggravated by his answer.

For to learn, he would encourage other men by the King's Book to do the like, whereto we may see the malice of this man, that will get praise from the *faulsh* *flower*, yet every *foolish* may take comfort in his Majesty's Book, and God forbid, that he which is wrong'd, should be encouraged to complain to his Sovereign; yet, this complaint is no Petition, but a very Libel, and deserves no better name.

The King's will it, that you should be bold, and that you should come to him; but yet you must be sure that your cause must be just and right. This is a good and gracious speech of a King; but in pity Mr. *Walsingham* shouldst *Scripture* to maintain an ill cause; and to clear my Lord-Chancellor dead, and alive, so he is worthy men as any in my time, and yet I have had a long age; and God forbid their Conscience should be led by private men's humours.

I say no more, but let every man that hears as this day, take heed, that their humours lead them not into their outrageous courses, but carry themselves with modesty. I shall not need to enlarge, but content with my Lords before me.

Earl of Arundel. I shall not need to use many words for the matter; in brief, *Walsingham* hath forgot himself fully against a great and high instrument of Justice, renewing complaints upon complaints; after the King had told him in my hearing, that the Lord-Chancellor had done justly, as he himself would have done; and therefore I think him very much to blame, as well deserving the censure given. And the use is (as you see by him) for malice may not so lack honesty, but reason and poise out of the wholesome flowers; as his prepossession is to be hated, so his humiliation and submission is to be pitied; yet I agree with my Lords in all things.

Probertus, Lord-Chamberlain. No man's mouth is so stopp'd, but in case of grief he may seek relief. I think there is little *terapie*, that either the Master of the Rolls that is dead, or the Lord-Chancellor that is living, did proceed without Justice; because it is but an order against an order, a thing very frequent and usual in this, and in all other arbitrary Courts.

For the sentence, I agree with the Court, being sorry, since his last rebellion was humble, that before he hath shewed this good part, and seld his wit to his own confusion.

Duke of Lenox. I am forry that *Walsingham* hath not the Grace of God to use the use of his Majesty's Book, which is not to complain without just cause; and without he could make proof of his complaint. I will

not repeat the worth of my Lord-Chancellor living, or dead; but I am forry that a man of so great parts should deserve to heavy a sentence; wherewith in all things I agree.

Wrobley, Lord Privy-Seal. My Lords, I am of opinion, as formerly my Lords have been; I do hold this a very scandalous Libel, being against a person of such worth; the greater the person is, the more severe should the punishment be for the offender: and so I consent in opinion with my Lords before me, and do think this offence to have exceeded his punishment; and therefore if a great fine had been laid upon him, I should have agreed unto it.

Arlet, Lord Archbishop of Canterbury. The Lord, the Fountain of Wisdom, hath for this glorious war of the World in the order and beauty whereto it stands, and hath appointed Princes, Magistrates, and Judges to hear the causes of the people, not so much out of authority, as out of justice and reason: for if no such persons were to hear and determine other men's causes, every man must be his own Judge, which would lead to nothing but ruin and preposterous confusion: God therefore, in his wisdom, order'd and ordain'd their bounds, in the Magistrate on the one side with infirmitie, and the Subject on the other side with protection; which infirmitie when he flowed them, the King's Throne is upheld by justice; and *Daniel* was commanded to rule his people with justice and judgment; and the like commandment is given to others in subordinate places, not to pry the person of the poor, nor to stand in awe of the face of the mighty, but to weigh the simplicity and integrity of Conscience. For mark the example of the most holy and reverend Judges, *Moses*, *Sonath*, and the rest, to whom their greatest comfort was, that they could say, *Whoso* *Go* *or* *Ar* *have* *I* *taken*? *From* *when* *have* *I* *received* *a* *reward*? And by the course of piety and duty, we that for sometimes to Judge others, are at another time to stand at a higher bar, to receive judgment from Heaven.

With the great grace, and beauty of protection, God calls them by his own name, God's Children of the Highest; God being present amongst 'em to direct them, and defend them; God himself in the Congregation of Princes, he is amongst all the People; thou shalt not detract nor slander the Judge, nor speak evil of the Princes of the people. And in two several Epistles, both in *Peter* and in *James*, it is said, "That in the latter days there shall be wicked men, that shall speak evil of Magistrates, and men of authority, blaspheming 'em;" as if it were blasphemy, tho' not against God, yet against those that are the Image of so great a God.

And therefore, since *Walsingham* hath blasphemed, spoken evil, and slander'd a chief Magistrate as any in the Kingdom; it remaineth, that in honour to God, and in duty and justice to the King and Kingdom, that he should receive severe punishment; for it is his cause to-day, and it may be ours every day; and have not some, for justice sake, been before'd to endure the threatening of their heads? Wherefore, if greater punishment had been given him, I should have assented, for justice brought to us, but liberty to our gracious Sovereign. Wherewith I agree in all things with the sentence before given.

Bosfield, Lord-Treasurer. I perceive, as the prisoner at the bar was charged at first, that he had foolishly offended, and ought to have yielded himself at the feet, and not to have made his offence greater, by defending a bad cause.

My Lords who have heard his fault in part led out, and transferred him, I think they have done very worthily. For the party himself, I would I could come to him with a little better charity than I can, for his answer did more displease me, than his cause; for I see his spleen and his humour grows, rather to defame a worthy man, than to free himself, how unjustly, I appeal to the whole World; who came to his place with as much satisfaction to all hearts, and applause, with as good carriage as any man I ever heard come before him.

The thing that I would conclude with, is, that I would be glad that all that here we might take us right that are Judges, we desire not to be forbidden by any *Sage's* tongue, that hath cause to complain; and therefore do it not for any particular respect to ourselves, but for the public course of justice; and for the care we have of the publick good, and for nothing else.

For the fault itself, it hath been so well opened by all the Lords, that I will spare to hold you longer in speaking of it. And for the sentence, I think it very fit and just: and therefore agree with the rest.

XVI. Proceedings on the Habeas Corpus, brought by Sir Thomas Darnel, Sir John Corbet, Sir Walter Earl, Sir John Heveningham, and Sir Edmund Hampden, Nov. 1627. 3 Car. I. at the King's-Bench, in Westminster-Hall.

THE King having deprived himself of the prospect of all parliamentary Aids, by dissolving the Parliament, and yet resolving to prosecute the war; it was necessary to project all possible ways and means of raising money; to which end letters were sent to the Lords-Lieutenants of the Counties, to return the names of the persons of ability, and what sums they might spare; and the Comptroller of the King's Household issued forth letters in the King's name, under the Privy Seal, to several persons returned for the Loan-money; some were affixed 20 £, some 15, and others 10 £; and Commissioners were appointed with private instructions how to behave themselves in this affair, and divers Lords of the

Council were appointed to repair into their Counties to advance the Loan*. Collectors were also appointed to pay into the Exchequer the sums received, and to return the names of such as refused, or discovered a disposition to delay the payment of the sums imposed. This assentment of the general-Loan did not pass currently with the people, for divers persons refused to subscribe or bond at the rate proposed; the non-subscribers of high rank in all Counties were bound over by recognizances to tender their appearance at the Council-board, and perform'd the same accordingly, and divers of them committed to prison: which caus'd great murmuring. But amongst these many Gentlemen who were impos'd^d throughout England, for refusing

* Sir *Randolph* *Cromwell* being so zeal for the advancement thereof, was then removed from his place of Lord Chief Justice, and Sir *Michael* *Hale* succeeded in his room: a person who, for his parts and abilities, was thought worthy of this profession; yet nevertheless came to the same with a persuasion, coming in the place of one so well known to be suddenly removed. *Raynolds*, Vol. I. Page 420.

† *Cromwell* *Charles* 1. pag. 31. Meant upon Friday the 10th of Nov. Sir *Randolph* *Cromwell*, Chief Justice of the King's Bench, was discharged of that place, by Writ under the Great Seal, for some cause of disaffection conceived against him; but for what, was not generally known.

to send upon the Commission for Loans, only five of them brought their Habeas Corpus, viz. Sir Thomas Darnel, Sir John Corbet, Sir Walter Earl, Sir John Heringham, and Sir Edmund Hampden.

Arguments upon the Habeas Corpus.

Sir Thomas Darnel *hic* Cujus, Michaelis, 3^o Caroli, Baro Regis.

SIR Thomas Darnel, Baronet, being imprisoned in the Fleet, by virtue of a warrant signed by the King's Attorney-General, upon the third of November, by Sir John Heringham, his assigned Council, moved the Justices of the King's Bench to grant him a Writ of Habeas Corpus *conco*, directed to the Warden of the Fleet, to show that Court the cause of his imprisonment, that thereupon they might determine whether his restraint were legal or illegal, and it was granted by the Court returnable Thursday following, the 8th day of November.

On Thursday, Sir Thomas Darnel expected that his Writ should be returned, but it was delayed, and it was moved that the return should be on Saturday, the 10th of November, which was made Sir Thomas Darnel the more ready in suing out an *alias* upon his Habeas Corpus.

On Saturday the Writ was not returned, and thereupon the King's Attorney-General gave order for an *alias* upon the Habeas Corpus for Sir Thomas Darnel, returnable upon Thursday morning the 15th of November; by virtue of which Writ, the Warden of the Fleet brings Sir Thomas Darnel to the King's Bench, and presents at followeth:

Ex parte ipsius Regis parte in quodam scholae antea hinc brevi.

The return was this.

"*Ego Henricus Lilie Miles gradumque pfectus Domini Regis de
"Elo, Thomas dornel Regi confectus quod dicitur Darnel Baro-
"netus detentus est in persona pfecti hinc catholici mea virtute confes-
"dam Warrantum duces de Privato Consilio mihi directis, ejus tenor
"sequitur in his verbis, viz.*

"*Whereas before the Body of Sir Thomas Darnel hath been commit-
"ted to your custody, these are to require you still to continue him; and to let
"you know that he was and is committed by the special command of his Ma-
"jesty, &c."*

Et hoc est causae detentus gradus Thome Darnel.

Serj. Brampton. MAY it please your Lordship, I did not expect this cause at this time, neither did I hear of it until I came now into the Hall; and therefore I shall now humbly shew you what my Client hath informed me since my coming hither. I understand by him that he expected not his coming to this place to-day, the Writ by which he was brought hither was not moved for by him, but was procured without his privity; and being his case is so, and that he perceives the cause of his coming, which before he knew not, his motion to your Lordship is, that you would be pleased to let him have the copy of the reason, and give him leave to speak unto it, and that this Writ being now sent out by his procurement, may not be filed.

Head, Attorney-General. My Lords, it is true that this Gentleman, Sir Thomas Darnel, being imprisoned in the Fleet, did heretofore move your Lordships for a Habeas Corpus, &c. and it was granted him, and his Majesty being made acquainted therewith, was very willing that he and all his people might have equal justice; and when they desire that which seems to accord with the rules of the law, they should have it. But it fell out so, that on the day when the Writ should have been returned, the Warden of the Fleet did not return it, as it was his duty to have done; he did forbear to do it upon a commandment, because it was conceived, there being live at that time to appear, the Court would have been frustrated for want of time: but I imagined that these Gentlemen who did desire the Writ before, should have again been earnest to renew them, which it seems they did not. Then *Habeas Corpus* was sent out by special command, because these Gentlemen gave out in speeches, and in particular this Gentleman, I that they did wonder why they should be hindered from Trial, and what should be the reason their Writs were not returned. Now, his Majesty did tell me, that they requested that the King did deny them the course of Justice, and therefore he commanded me to renew the Writ, which I did, and think I may do it *ex officio*.

Sir Thomas Darnel. My Lords, I know not until now, but that I was concerned by Sir Attorney's Warrant only, and thereupon I did desire a Habeas Corpus at the bar, which you were pleased to grant me; but now I understand that my restraint is by another means, and therefore I shall crave

Michaelis, 3^o Caroli Regis. Thursday 23 November, 1627.

Sir John Corbet, Baronet, Sir Walter Earl, Sir John Heringham, Sir Edmund Hampden, Knights, were brought to the Bar.

Serj. Brampton. MAY it please your Lordship to hear the return read, or shall I open it?

L. C. Jusse. Let it be read.

Mr. Justice read the return, being the same as that of Sir Thomas Darnel.

Serj. Brampton. May it please your Lordship, I shall humbly move upon this return on the behalf of Sir John Heringham, with whom I am of Council; it is his petition, that he may be bailed from his imprisonment. It was but in vain for me to move that to a Court of Law, which by Law cannot be granted; and therefore in that regard, that upon this return it will be questioned, whether at this return it made, the Gentleman may be bailed or not? I shall humbly offer up to your Lordship the case, and some reasons out of mine understanding, arising out of the return itself, to satisfy your Lordship that these prisoners may, and, as their case is, ought to be bailed by your Lordship.

The exception that I take to this return, is as well to the manner and substance of the return, as to the manner and legal form thereof: the exception that I take to the matter, is in several respects.

That the return is too general, there is no sufficient cause shown in special or in general of the commitment of this Gentleman; and as it is insufficient for the cause, so also in the time of the first imprisonment: for howsoever here hath appeared some upon the second Warrant from the

leave to have some time to speak to it. And as for the words alleged against me, as if I had spoken them, I humbly pray they may be no disparagement to my Cause, for I do purposely refer myself to your grave censures, as being accused of a fault whereof I am no ways guilty.

Hydr. L. C. Jusse. You give a temperate and fair answer; and now you may perceive the upright and sincere proceedings that have been in this business. You did no sooner petition to have Counsel assigned you, but you had it granted to you, for indeed we cannot deny it, and I know not but that any Counsel might have moved for you, without having been assigned for you, and yet have had no blame, for it is the King's pleasure his laws should take place and be executed, and therefore do we sit here. When you made a motion for a Habeas Corpus, that was likewise granted, whether the commitment be by the King or others, this Court is a place where the King doth sit in person, and we have power to examine it, and if it appears that any man hath injury or wrong by his imprisonment, we have power to deliver and discharge him; if otherwise, he is to be remanded by us to prison again. Now it seems you are not ready to speak to this return, if you desire a further day, we ought to grant it.

Sir Th. Darnel. My Lords, I humbly desire it.

L. C. Y. I know no cause why it should be denied.

Serj. Brampton. My Lords, we shall desire the Writ may not be filed, and that we may have a copy of the return.

Attorn. Gen. You cannot deny the filing of the Writ, if you do not have a copy of the return.

L. C. Jusse. Although you be remanded at this time to prison, because you are not ready to speak to the return, we can adjourn you to a new day upon the Writ, and so you may prepare yourself; but if you will not have this filed, then must go out a new Habeas Corpus, and thereupon must be another return.

Serj. Brampton. My Lord, we desire sometime, that we may be advised whether we may proceed or not.

L. C. Jusse. Will you forbear yourself to the King?

Sir Th. Darnel. My Lord, I desire some time to advise of my proceedings: I have moved many men, and offered to retain them of my Counsel, but they refuse me, and I can get none to be of Counsel with me without your allowance.

L. C. Jusse. You shall have what Counsel assigned you you will have or desire; but no offence will be taken against any man that shall advise you in your proceedings in Law.

Attorn. Gen. I will pass my word, they that do advise you, shall have no offence taken against them for it; and I shall give content to any way that you shall desire, either that it may be filed, or that it may not be filed; for if you desire Justice, you shall have it, and the King will not deny it; but if it shall be considered, as it is returned, that there was a denial of Justice on the King's part, you must know that his Majesty is very tender of that. And for the Gentleman, now he is brought hither, I conceive, but yet I leave it to your Lordship's judgment, that the Writ must be filed, and you must either deliver him, or remand him, or else it will be an escape in the Warden of the Fleet.

Sir Th. Darnel. I would not have it thought that I should speak any thing against my Prince, and for those words I do deny them; for upon my conference they never came into my thought: perhaps you shall find that they have been spoken by some other, but not by any of us.

L. C. Jusse. Sir, you have made a fair answer, and I doubt not but Mr. Attorney will make the like relation of it; you move for the not filing of the Writ; if you refuse to have it filed, whereby it should not be of record, you must have no Copy of it, but if you will have it filed you shall have a Copy of it, and further time to speak to it, choose whether of them you will.

Serj. Brampton. We desire to have the return read once more.

And it was read as before.

Serj. Brampton. So as the Writ may not be filed, we will desire no copy of the return.

L. C. Jusse. Then the Gentleman must return back again into the custody of the Warden of the Fleet; and therefore I ask you, whether you desire to come hither again upon this Writ, or will you have a new one?

Sir Th. Darnel. I desire your Lordship that I may have time to consider of it.

L. C. Jusse. Then in God's name take your own time to think of it.

Lords of the Council to detain him still in prison, yet by the return no time can appear when he was first imprisoned, tho' it be necessary it should be shown; and if that time appear not, there is no cause your Lordship should remand him; and consequently he is to be delivered.

Touching the matter of the return, which is the cause of his imprisonment, it is expressed to be *per speciale mandatum domini Regis*: this is too general and uncertain, for that it is not manifest what kind of command this was.

Touching the legal form of the return, it is not, as it ought to be, fully and positively the return of the Keeper himself only, but it comes with a *procurator*, or *procurator*, that he was committed *per speciale mandatum domini Regis*, as appears by Warrant from the Lords of the Council, not of the King himself, and that is not good in legal form.

For the matter and substance of the return, it is not good, because there ought to be a cause of that imprisonment.

That Writ is means, and the only means that the subject hath in this case to obtain his liberty; there are other Writs by which men are delivered from restraint, as that of *habeas replegiandum*, but extends not to this cause, for it is particularly excepted in the body of the Writ *de mancipatione, et de custodie admittenda*, but they lie in other cases: but the Writ of Habeas Corpus is the only

against the subject hath to obtain his liberty, and the end of this Writ is to return the cause of the imprisonment, that it may be examined in this Court, whether the parties ought to be discharged or not: but that cannot be done upon this return for the cause of the imprisonment of this Gentleman at first is so far from appearing particularly by it, that there is no cause at all expressed in it.

This Writ requires that the cause of the imprisonment should be returned, and if the cause be not specially certified by it, yet should it at the least be shewn in general, that it may appear to the Judges in the Court, and it must be expressed so far, as that it may appear to be none of those causes for which by law of the Kingdom the subject ought not to be imprisoned, and it ought to be expressed that it was by imprisonment a *vi et contra*, and not upon petition or suggestion made to the King and Lords, which is against the Statute made in the 25 Edw. III. c. 4.

43 Edw. III. c. 3.
By the Statute 25 Edw. III. cap. 4. it is ordained and established, That no man from henceforth shall be taken by prison or imprisonment made to the King or his Council, but by indictment or course of law; and accordingly it was enacted, 42 Edw. III. cap. 3. the title of which Statute is, None shall be put to answer an accusation made to the King without imprisonment. Then, my Lord, it being so, although the cause should not need to be expressed in such manner as that it may appear to be some of those causes mentioned in the Statute, or else the subject by this return justify the benefit and advantage of these laws, which be their birth-right and inheritance: but in this return there is no cause at all appearing of the first commitment, and therefore it is plain, that there is no cause for your Lordship to remand him; but there is cause you should deliver him, since the Writ is to bring the body and the cause of the imprisonment before your Lordship.

But it may be objected, that this Writ of *Habeas Corpus* doth not demand the cause of the first commitment, but of the detaining only; and so the Writ is satisfied by the return; for though it show no cause of the first commitment, but of detaining only, yet it declareth a cause why the Gentleman is detained in prison: that is no answer, nor can give any satisfaction; for the reason why the cause is to be returned, is for the subject's liberty, that if it shall appear a good and sufficient cause for your Lordship, this to be remanded; if your Lordship think and find it is sufficient, he is to be enlarged.

This is the end of this Writ, and this cannot appear to your Lordship, unless the time of the first commitment be expressed in the return. I know that in some cases the time is not material, as when the cause of the commitment is (and that is specially) returned, so that the time is not material, it is enough to show the cause without the time, as after a conviction by Trial had by Law, but when it is in this manner, that the time is the matter itself; for intend what cause you will of the commitment, you though for the highest cause of Treason, there is no doubt but that upon the return thereof the time of it must appear; for it being before Trial and Conviction had by law, it is but an accusation, and he that is only accused ought by law to be let to bail.

But I beseech your Lordship to observe the consequence of this cause. If the law be, that upon this return this Gentleman should be remanded, I will not dispute whether or no, a man may be imprisoned before he is convicted according to the law; but if this return shall be good, then his imprisonment shall not continue on for a time, but for ever; and the subjects of this Kingdom may be restrained of their liberties perpetually, and by law there can be no remedy for the subject; and therefore this return cannot stand with the laws of the Realm, or that of *Magna Charta*, nor with the Statute of 28 Edw. III. cap. 3. for if a man be not bailable upon this return, they cannot have the benefit of these two laws, which are the main pillars of the subject.

If your Lordship shall think this to be a sufficient cause, then it goeth to a perpetual imprisonment of the subject: for in all those causes which may concern the King's subjects, and are applicable to all times and cases, we are not to reflect upon the present time and government, where justice and money floweth, but we are to look what may befall us in the time to come, hereafter.

It must be agreed on all sides, that the time of the first commitment doth outstrip in this return; but by a later warrant from the Lords of the Council, there is a time indeed expressed for the continuing of him in prison, and that appears, but if this shall be a good cause to remand these Gentlemen to prison, they may lie there these seven years longer, and ten years after then, nay, all the days of their lives. And if they sue out a Writ of *Habeas Corpus*, it is but making a new Warrant, and they shall be remanded, and shall never have the advantage of the laws which are the best inheritance of every subject.

And in Edw. VI. c. 16. the laws are called the great inheritance of every subject, and the inheritance of inheritances, without which inheritance we have no substance.

These are the expressions I desire to offer up to your Lordship touching the return, for the insufficiency of the cause returned, and the defect of the time of the first commitment, which should have been expressed.

I will not labour in objections till they be made against me, in regard the Statute of *Writs after prison* is so frequent in every man's mouth, that at the Common Law those men that were committed in four cases were not releasable; viz. those that were taken for the death of a man, or the committing of the King, or for Justice for the Forest. I shall speak something to it, though I intend not to spend much time about it, for it toucheth not this case we have in question.

For that is concerning a case of the Common Law, when men are taken by the King's Writ, and not by word of mouth, and it shall be so expressed, as Mr. Stoughton, fol. 73. yet it is nothing to this case, for as I will take the true meaning of that Statute, it extends not at all to this Writ of *Habeas Corpus*, for the words are plain, they shall be releasable by the common Writ, that is, by the Writ de *habeas corpus*, directed to the Sheriff to deliver them, if they were bailable: but this shall not be the Sheriff, and he is not to be Judge in it, whether the cause of commitment be sufficient or not, as it appears in *Fitz-Herbert*, de *habeas corpus*, and many other places, and not of the very words of the Statute. This is clear, for there be many other causes mentioned, as the taking of a man, the committing of the Justices, &c. in which the Statute is clear, men are not releasable. But will a man conceive that the

meaning is, that they shall not be bailed at all, but live in perpetual imprisonment? I think I shall not need to spend time, in that it is so plain, let me but make one inference.

A man is taken de *motu hominis*, he is not bailable by Writ, saith this Statute; that is, by the common Writ: there was a common Writ for this case, and that was called de *adv. &c.* as, apparently, *Bracton*, Cap. 34. That is the Writ issued by the Statute, which is a common Writ, and not a special Writ, but, my Lord, as this Writ de *adv. &c.* was before the Statute, for it was afterwards taken away by the Statute of 28 Edw. III. cap. 3. But before this Statute, this Writ did lie in the special case, as it sheweth in *Co. l. 1. q. 11. re. 1.* the *Palmer's case*, and the first of this Writ was, that the subject might not be too long detained in prison, as till the Justice of Eyre discharged them. So that the Law intended not that a man should suffer perpetual imprisonment, for they were very careful that men should not be kept too long in prison, which is also a liberty of the subject, and, my Lord, that this Court hath bailed upon a false plea of High-Treason, I will offer it to your Lordship, where I shall shew you precedents in these cases of a committal by the Privy-Council, or by the King himself: but before I offer these precedents unto your Lordship, of which there be many, I shall by your Lordship's favour speak a little to the next exception, and that is to the matter of the return, which I find to be per *speciale mandatum domini Regis*. And what is that? It appears by this Writ, there may be further commands by the King, we find a special command often in our Statute, as in the Statute of *Marl. cap. 8.* they who were imprisoned *Rege* shall not be delivered without the special command of our Lord the King. And in *Bracton*, de *Abolitione*, the last chapter, where it appears that the King's commandment for imprisonment is by special Writ, so by Writ again men are to be delivered, for in the case of *Rege*, or *Rege*, if it shall be removed by a *Carta*, that is by a special Writ so *Rege* persons. So that by this appears, that by the King's commandment to imprison, and to deliver in those cases, is understood this Writ, and so it may be in this case which we have heard.

And this return here is a special *Mandatum*; it may be understood to be under some of the King's Seals, 42 *Ass.* and ought to be delivered; and will you make a difference between the King's command under his seal, and his command by word of mouth? What difference there is, I leave it to your Lordship's judgment, but if there be any, it is the more material that it should be expressed what manner of command it was, which doth not here appear; and therefore it may be the King's command by Writ, or his command under his seal, or his command by word of mouth alone. And if there is any of these commands of an higher nature than the other, doubtless, it is that the Writ, or under seal, or by word of mouth, and in their the person may be bailed, and why not in this? As to the legal form, admitting there were falsitudes in the return, yet there wants legal form; for the Writ of *Habeas Corpus* is the commitment of the King to the Keeper of the prison, and thereupon they are to make reason both of the body, and of the cause of the commitment, and that cause is to appear of them who are the immediate Officers. And if he doth it by feignation from another, that return is defective in law, and therefore this return cannot be good, for it must be from the Officer himself, and if the cause returned by him be good, it binds the prisoners.

The Warrant of the Lords was but a direction for him; he might have made his return to have been expressly by the King's commandment, there was Warrant for it, I shall not need to put you cases of it; for it is not enough that it seems that he was certified that the commitment was by the King's commandment, but he must of himself return this fact as it was done.

And now, my Lord, I shall offer to your Lordship precedents of divers kinds, upon commitments by the special command of the King, and upon commitments both by the King and the Lords together. And hereafter I conceive, which I submit to your Lordship, that our case will not stand upon precedents, but upon the fundamental laws and Statutes of this Realm; and though the precedents look the one way or the other, they are to be brought back unto the laws by which the Kingdom is governed. In the fifth of Henry VIII. *Re. Parl. c. 1.* one *Harris* was committed to the *Marshalsea* by the command of the King; and being removed by *Habeas Corpus* into the Court, the cause returned was, that he was committed per *mandatum Domini Regis*, and he was bailed.

In the fourth of Elizabeth, *Thomas Weston* was committed to the *Marshalsea* by the commandment of the Queen, and the Lords of the Council; and being removed by an *Habeas Corpus*, upon the general return he was bailed.

In 8 *Jack*, one *Croft* was committed by the King's commandment, and this being returned upon his *Habeas Corpus*, upon the examination of this case it doth appear that it was committed, that the return should be amended, or else the prisoner should be delivered.

The precedents concern the commitment by the Lords of the Council, are in effect the same with these where the commitment is, by the reason why the cause of the commitment should not be shewn, holds in both cases, and that is the necessity of fact; and therefore Mr. Stoughton makes the command of the King, and that of the Lords of the Privy-Council, to be both one; and to this purpose, if they speak, he speaks; and if he speaks, they speak.

The precedents that we can shew you, how the subject hath been delivered upon commitment by the Lords of the Council, as in the times of Henry VIII. and in the times of Queen Elizabeth, and Queen Mary, are infinite, as at length of *Lizabell*, *Thomas Lawrence* was committed to the Tower by the Lords of the Council, and bailed upon an *Habeas Corpus*. In the 43rd of Elizabeth, *Gahin's case*.

In the 28 of Elizabeth, *Forbes's case*. These were committed to High-Treason, and yet bailed; for in all these cases there must be a conviction at due time, or a deliverance by law.

There be divers other precedents that might be shewn to your Lordship. In 13 *Jack*, *Miles Rowland*. In 27 *Jack*, *Re. 155.* *Richard Brevint's case*. In 14 *Jack*, *Sir Thomas Merlyn* was committed for Treason to the Tower of London, and afterwards was brought hither, and bailed; and once our case stands upon this return, and yet there is no sufficient cause in law expressed as the return of the detaining this Gentleman; and since those precedents do warrant our proceedings, my humble fear is that this Court is, that the Gentlemen, Sir John Humezburgh, who hath presented

tioned his Majesty, that he may have the benefit of the law, and his Majesty hath signified it, it is his pleasure that justice according to the law should be administered at all times in general to all his subjects, and particularly to these Gentlemen, which is their birth-right: my humble suit to your Lordship is, that these Gentlemen may have the benefit of that law, and be delivered from their imprisonment.

Mr. Noy's Arguments of Counsel with Sir Walter Earl at that Time.

May it please your Lordship, I am of Counsel with Sir Walter Earl, one of the prisoners at the bar: the return of this Writ is as those that have been before, they are much of one tenor, and as you have heard the tenor of that, so this Gentlemen coming hither by an Habeas Corpus, I will by your Lordship's favour read the Writ.

"Carolus, Dei gratia, &c. Johanni Libero Militi Guardiani Prisoni"
 "advis de Fleet faler", Preceptum tibi quod Corpus Johanni Earl
 "Mili in prison nostra sub custodia sua decessat ad dictum cum causa
 "detentionis sue quocunque nomine produci: Wateri earl in eadem
 "Habeas Corpus, ad subjectionem et respectum ex quo curia nostra de
 "eo adfuit et habere ordi' contum' in hac parte et hanc nullatenus onit'
 "periculo incumbat: in habet illi hoc breve. Tell' Ryde, apud West'
 "magistr, quarto die Novembris, Anno 8."

Excerpts of the Brevis potest in quodam schola hinc brevis annexat.

Refus: Johan' Libero Militi Guardiani Prisoni de la Fleet.

"Ego Johannes Libero Mil' Guardiani Prisoni domini Regis de la Fleet,
 "Secundum Domini Regi, apud Westminster 8. Post receptionem huius
 "brevis quod in hac schola est mentionat, Certifico quod Wateri
 "Earl miles, in eodem locum nominat' detentus est in Prisoni de la
 "Fleet sub custodia mea per dictum per speciale mandatum domini Regi
 "mihi significatum per Warrantum eorum et aliorum de Privata
 "Cancilio perhonorabilium dñi domini Regi, cujus quidem tenor sequitur
 "in hac verba."

Whereas Sir Walter Earl, Knight, was heretofore committed to your custody, these are to will and require you still to detain him, letting you know, that both his self committed, and this direction for the continuance of him in prison, were and are by his Majesty's special commandment, from Whitehall, 7 November, 1627.

Thomas Coventry, C. S.	Marlborough.
Henry Jochamys.	Probleke.
Thomas Saffish.	Saffbury.
Brigdenor.	Ting.
Kelly.	Gradyfen.
R. Donnell.	Culver' Both & Wills.
Thomas Edwards.	Robert Nevins.
John Gask.	Richard Wyllm.
	Humphry Mayne.

To the Guardian of the Fleet or his Deputy.

"Ex hac est causa detentionis produci: Wateri Earl sub custodia mea
 "in Prisoni produci'. Attamen coram eisdem Wateri coram Domino
 "Rege ad dictum et locum produci, post receptionem brevis produci' po-
 "rat' habere proce' illud breve in exiget et requirit."

Refus: Johan' Libero Militi Guardiani Prisoni de la Fleet.

My Lord, the first Habeas Corpus beara date the 4th of November, then there is an *Alia Habeas Corpus* after that, and the tenor thereof is a command to the Warden of the Fleet, quod Habeas Corpus Walteri Earl, coram talis ad subjectionem et respectum ex quo verba ista de se, ordi' curie'. And the Warden of the Fleet, he certifies as your Lordship has heard. May it please your Lordship, I desire as before was desired for the other Gentlemen, that Sir Walter Earl may be also bailed, if there be no other cause of his imprisonment: for if there were a cause certified, and that cause were not sufficient to detain him still in prison, your Lordship would bail him; and it is a man should be in a worse case, when there is no cause certified at all, than would be very hard.

The Writ is, that he should bring the Prisoner coram nobis, before the King, the end of that is ad subjectionem et respectum: now I conceive, that this there be a signification of the King's pleasure to have this Gentlemen imprisoned, yet when the King grants the Writ to bring the prisoner further, ad subjectionem et respectum, his pleasure is, that he have the prisoner let go, if by law he be not chargeable; or otherwise to detain him still in prison, if the case so require it.

I will put your Lordship in mind of a case, and it was Paget, 9 Edw. III. 2. I will cite by the Plowde, because my Book is not paget as other Books are; it is in the case of a Captive.

In that case there was two things considerable: the one that there was a signification of the King's pleasure, and that determined with him the other, that though there was a signification of the King's pleasure before, yet there comes after that a Writ, and that was another signification of the King's pleasure, that the Prisoner shall be brought further ad subjectionem, et subiectum hinc: in punishment, if he have delivered it, or ad subjectionem, to receive his enlargement, and be delivered, if there be no cause of his imprisonment.

And if upon an Habeas Corpus, a cause of commitment be certified, that cause is to be tried here before your Lordship. But if no cause be shown, then the proceeding shall be as it is before of men's captivities, the Court must do that which stands with Law and Justice, and that is to deliver him.

My Lord, I shall be bold to move one word more touching this return: I conceive that every Officer at a Court of Justice must make his return of his prisoner, or of the act of another, and not what he is certified of by another.

But in this case the Warden of the Fleet doth not certify himself, of himself, that this Gentleman was committed to him by the King, but that he was certified by the Lords of the Council, that it was the

King's pleasure that he should detain him. But in our case the Warden of the Fleet must certify the immediate cause, and not the cause of the cause, as he doth by this return; *Dantes est sub custodia mea per speciale mandatum Domini Regi mihi significatum per Warrantum eorum de Privata Cancilio*; that is not the use in law, but he ought to return the primary cause, and not the subsequent cause, as in 31 Edw. III. return, *Rex adfuit 87*, in a Writ de *habeas corpus*, against an Abbot, the Sheriff returns, that he hath sent to the Bailiff of the Abbot, and he delivered him, that the party was the Abbot's villain, and to be so not deliver him; that is held an insufficient return, and a new cause is granted. But if the Sheriff had returned, that the Abbot did certify that he had been good; but he must not return what is certified him by another.

In one of the precedents that hath been cited, as in *Perley*, 22 Hen. VIII. there the Guardian of the prison certifies, *The Parker detinetur sub custodia mea per mandatum Domini Regi mihi significatum per Robertum Peck*; now our case is by the assent of many, but as law major: *Et minus est nocere in finibus*, the certification of one of many is of the same effect, although in moral understanding there may be a difference.

Trin. 4 Edw. III. 2. 45. in this Court on 21 Edw. III. in the printed Book there is a piece of it: the Abbot of Bath brings a petition into this Court, the Bishop of Norwich pleaded in bar of that, *Spod mihi significatum quod certior in finibus*, that he is excommunicated; there were two exceptions taken to this case in this precedent, and that both in one case: the first was, that no cause appeared, why he was excommunicated; there may be cause why he should be excommunicated, and that he should be bailed, and there may be cause why the excommunication should not be put on him; for it may be the excommunication was for bringing the petition, which was the King's Writ, and therefore because there was no cause of the excommunication returned, it was ruled that it was not good. The other reason is that upon the Roll, which is made by the King.

Now every man, when he will make a Certificate to the Court, *Preceptum subjectionem non alterius signum est de se*, he must inform the Court of the immediate act done, and not that such things are told him, or that such things are signified unto him; but that was not done in this case, and therefore it was held insufficient, and so in the case of ours I conceive the Return is insufficient in the form. There is another cause, my Lord, for which I conceive that return is not good.

But first I will be bold to inform your Lordship, touching the Statute of *Magna Charta* cap. 29. *Nadus Rex bene capere vel imprisonare, &c. nec jure suo minus nisi per iudicium legitimum prius sit nisi per legitimum iudicium*.

That in this Statute these words in *Curiam* are inserted out of the printed Books: for it should be so seen in the original edition. For these words *per legitimum iudicium*, what *Legitimum* should be, I will not take upon me to conclude, otherwise then I find them to be expounded by Acts of Parliament; and this is, that they are understood to be the process of the law, sometimes by Writ, sometimes by Attachment of the person; but whether *speciale mandatum Domini Regi* be intended by that or no, I leave it to your Lordship's exposition upon two petitions of the Commons, and answer of the King, in 36 Edw. III. 25. q. and N^o. 20.

In the fifth of them the Commons complain that the great Charter, the Charter of the Forest, and other Statutes were broken, and they desire that for the good of himself and of his people, they might be kept and put in execution, and that they might not be infringed by making an arrest by special command, or otherwise: and the answer was, that the assent of the Lords established and obtained, that the said Charter and other Statutes should be put in execution according to the petition, and that without any disturbance by arrest by special command or otherwise, for it was granted, as it was petitioned.

In the fourth petition, for they were very careful of this matter, and it was necessary it should be so, for it was then an usual thing to take men by Writs *passiones de capiti*, and many of these words called many Acts of Parliament; and it may be some of these Writs may be shown; and I say in the same year they complained that men were imprisoned by special command, and without indictment or other legal Course of law, and they desired that thing may not be done upon men by special command against the great Charter.

The King makes answer, that he is well pleased therewith: that was the first answer, and for the future he hath added further, if any man be grieved, let him complain, and right shall be done unto him. This, my Lord, is an explanation of the great Charter, as also the Statute of 37 Edward III. 2. 45. is a Commentary upon it, that men would not be committed upon suggestion made to the King, without due proofs of law against them, and so it is enacted twice in our year.

We find more printed Books, as in *Hen. VI. Adfuit de factis*, *Foca*, 282. which is a strong case, under favour, as an *Adfuit* of trespass for cutting down trees. The Defendant saith, That the place where the trees are cut, is parcel of the Manor of B., whereas the King is situate in fee, and that the King did command him to cut them; and the opinion of the Court was, that this was no good plea, without shewing the speciality of the command; and they said, if the King commanded me to arrest a man, and I arrest him, he shall have an action of false imprisonment against me, although it were done in the King's preference.

In 1 Job. 27. 7. 26. 46. it is in print, and there we leave it.

Highly Chief Justice saith, that Sir John Methuen told King Edw. IV. that he could not arrest a man upon suspicion of Felony or Treason, as any of his subjects might, because if he should wrong a man by such arrest, the priors could have no remedy against him, if any man shall stand upon it. Here is a signification of the King's pleasure, not to have the cause of the commitment examined; he hath here another signification of his pleasure by Writ, whereby the party is brought further ad subjectionem et respectum, that he hath made your Lordship judge of that, who is should be objected against this Gentleman, and either to punish him, or to deliver him; and if there be no cause shown, it is to be intended that the party is to be delivered, and that it is the King's pleasure it should be so: and the Writ is a sufficient Warrant for the doing of it, these being no cause shown of the imprisonment. And now, my Lord, I will speak a word to the Writ de *habeas corpus*, and no other Writ, for that was the common Writ, and the four causes expell'd in this Statute, to-wit: the death of a man, the command of the King, or his Justice, or Sheriff, were excepted in that Writ before that Statute made, or appears *Bract* 233. so that the Writ was at the Common-Law before that Statute.

It was mentioned to be *Leandro Brown's* case, so *Ellis* knows what it is, but it is like to be of the same value as the rest; *Procedo in se non servatibus*, &c.

And thus, my Lord, I have gone through those precedents that were assigned to me before your Lordship; and now I will come to those precedents that were brought to me, and not mentioned here.

The first was *John Brown's* case, in 22 H. VIII. My Lord, these precedents came not to me before *Leandro Brown's* case, about candle-lighting; and yesterday was no time fitting to search out precedents, and how could I then search for this?

The next was *William Roper's* case, of the same time. But the cause is expressed to be for *disruption of Felony*, which is a cause within the jurisdiction of this Court.

Neaper's case was the next, in 14 & 5 Phil. & Mar. and so was *Thomas Leaver's* case, of *Ellis*, and *John Herriot's* case, 5 Edw. which was for *disruption of Felony*. *Richard Bucknall's* case, not *Brown's*, as was stated, for they have mistaken both names and matters, was committed for *James' malicious disseizin Regis*, and the Record hath he was hanged. But it was by reason of a letter in the Lords of the Court.

The cause of *Four Miles's* commitment in the 4 and 5 of Philip and Mary, appears to be for *intoxication of Felony and Robbery*.

Forster's case, it is true, came with *Richard's*, and were both for the same thing. In the 13 Edw. VII. our *Reverend* was committed for *disruption of Felony*, and it was for a criminal cause, and he was afterwards indicted, and acquitted of all offences.

And there is another precedent thereof, that faith, he was afterwards *arraigned, condemned, and hanged*; we have the Record of it.

And now, my Lord, I will show these former precedents on the King's side, where most have been committed by the commitment of the King, and by the command of the Council, and have been taken away again by their dissolution; and of this kind there be two in the Tower, that were committed by *Warrant*, to go to *Warrants* again for the same thing, were delivered by the officers were against the writ, and so were they.

In the 4th Edw. III. M. 4. *Edward de Neuper in Tynne* was committed for an offence committed by him in the Forest. And M. 5. *John de Neuper* was likewise committed for an offence by him done in the Forest; and then he was taken to his home.

M. 20. *John de Warr* was the like, and there was a letter from the King, *Quid faceret in Disruptione ipsius de Foresta Officiis*.

They were officers within *Habeas Corpus* process, and there be several Warrants to hold them.

The Clerk of this Court hath many Records, by which it appears, that many have been committed by the command of the King and of the Queen, and of the Council, and brought their *Habeas Corpus*, and captured; and that most of them were committed to the same prison, and were removed to the Marshal of this Court: the reason was, for that many of these were to appear here, their causes being brought here; and it would have been a great trouble to send them back to sit to prison as into the County; and therefore they were delivered to the Marshal of the King's household; again, many had their trials in the Court, and were justified, and some were delivered by special command, as they were committed by their commitment.

The number of such of this nature are infinite that have been in our times; we have found many forty precedents of men committed out of the Chancery, and by the High-Commission, for contempt, and abuse by the Barons of the Exchequer, and some in London, that have been brought hither by *Habeas Corpus*.

Of this I shall say no more, but in the 1st *Tynne*, there was a private commitment to *Leaver*, made between the whole Barons, that they might have one by another, and the one was to make the other's liberty; and for some time after the commitment, the one was committed to prison, as *Thomas Herriot's* case, and *Leaver's* case, they had a *Habeas Corpus*, and the cause was shown to be against the said Commitment, and the reason the prisoners were sent back to *Leaver*, to abide the order of the Mayor, for my Lord, this Court hath been very careful not to examine the Deeds of the Chancery, or Court of Requests, but have only looked whether the cause is within the jurisdiction of this Court, nor have they called in Justice *Waller's* and other considerations of Law, but they find them back to the Court of Justice that committed them.

And hath this Court been careful of these infirm Courts to this which is the case; and when the King, who is the Head of Justice, shall commit a man, shall not they be careful to do the like Justice to him? But when we have taken them, The commitment was by my Warrant and Commission, and I was careful of this, and whether this commitment be good or no? I hope you will not.

And now, my Lord, I shall say some precedents which have been taken out of the Tower, and I shall make it appear, that as they have been committed by the King or Council, so they had Warrants also to discharge them; and my Lord, are two ancient Records, the first is H. VII. Rot. 6. the other, Rot. 73. The first was *Thomas Brown's* case, he was committed to the Tower by *per execution dissonis Regis*, & *alibi verba de capiti*; and afterwards, the Records say, *Deus non Rex quod Causa solvitur mandata Regis*, not be worthy led, and there it lay by it.

My Lord, I will conclude, I could be infinite in this kind of precedents, but through the want of your Lordship's knowledge, what right or precedents, it is not enough to show this was done, but also to show the reason why it was done. I will shew your Lordship no longer, but if any man shall shew me that there is any precedent be truly proved which is fit to be touching the Record or Statute, I can say no more, but that the Statute has been used, and the Warrant is truly proved out to be sent to your Lordship.

I shall say no more, but I shall say in this case, to answer the last rather than the first, it is to be of the same value, this may be a cause of great damage to the whole of England, who shall make it appear that they have been committed by the King or Council, so they had Warrants also to discharge them; and my Lord, are two ancient Records, the first is H. VII. Rot. 6. the other, Rot. 73. The first was *Thomas Brown's* case, he was committed to the Tower by *per execution dissonis Regis*, & *alibi verba de capiti*; and afterwards, the Records say, *Deus non Rex quod Causa solvitur mandata Regis*, not be worthy led, and there it lay by it.

My Lord, I English it not, for I apply it to the case, and may make use of it as he pleases; and so I conclude it to be of the same value, and manner of the reason, which I refer to your Lordship's judgment, whether it is fit to be returned that these words, *per execution dissonis Regis*, be not sufficient. And for the matter, whether it is fit to be returned, I shall not build it, I have showed your Lordship, that by the first of all, these are not sufficient, but have been remanded back.

And the next I pray your Lordship, that these Gentlemen may be committed, and left to go to the right way, for the first of all, which is by a petition to the King. Whether it is a Petition of right or of grace, I know not, it may be, I am sure, to the King, in which I am partially and stand that these Gentlemen did never yet present any Petition to him that came to his knowledge.

L. C. Justice. My Attorney, this much we may say to you, you have taken a great deal of pains, you having had so short a time to consider of this case, it is a deal of every great weight and expectation, and we do not intend that you shall expect long for our resolution, for that the Gentlemen are in prison, and desire no doubt to know where they must trust; I hope we shall resolve according to the reason of former times, and according to our consciences; but this I must tell you, as I did that that argued, you must bring in your precedents, for though we have face some of them, yet some of them we do not fear, therefore we desire that your precedents you have mentioned on the King's part, for we intend to meet this afternoon, and you shall have our opinions tomorrow, and I must tell you on the other side, that this case being of such weight, Counsel should be wary how they speak any thing to us, or to the Court.

Touling such precedents as you argue as former times, and we have them for such a great weight and expectation, for you have not only told us of such things as be shown, I speak it to the purpose, and to prejudice the cause, so to deliver my opinion, which it comes me not, but in this, that Counsel should be careful, and this I desire, more is matter, that the precedents themselves that lead to another case, if they were committed.

The 1st now goes away, you shall not be long in expectation, we will meet this afternoon, and we will see our opinions tomorrow.

My Lord. We desire that Mr. Attorney may bring the precedents of 34 Elizabeth with him.

Mr. Attorney. I will show you the 1st, but my Lord, I shall be held to stand the present of this place, as the King's Counsel, where the King's Attorney, with such a, there shall be no more, next after that, but if you ask to see any thing, you shall have it.

L. C. Justice. It is not we are at, that time and night now appear, and let us finish the one or the other part, but it is not desired to make use of by way of reply, but for the sake of the cause.

Mr. Attorney. My Lord, for the precedents I cited, I did think they should have been brought and read in the Court, that your Lordship might be there.

L. C. Justice. You shall need no Apology, the Records and Precedents shall be brought to the Court, and read openly, for the Court will not wrong you, and you shall for the difference between them, and your relation of them, nor you will not wrong us with your written version.

ON Thursday, the twenty-eighth of November, Michaelmas, 34 Elizabeth, Chief Justice Hall, Justice Dunning, Justice Tynne, and Justice Widdowes on the King's side, but John Greke, Sir Walter Earl, Sir John Herriot, and Sir Leonard Hopton on the Bar.

L. C. Justice. I am sure you have expected the resolution of the whole Court, as touching yesterday's case, and you shall have it.

But as a case of great weight and expectation, and it had been fit we should have taken more time, but we have not time, and it is not fit that we should say no more to you for this case, but we shall know what you shall think, I am sure you expect it, since then we are, and I shall say no more to you, but I do Justice to all men according to our best skill and knowledge, for it is our duty and duty to be done, and I am sure there is nothing fit, excepted of us. We are sworn to maintain all Privileges of the King, that is one branch of our oath; and we are likewise sworn to administer Justice equally to all people.

We cannot, I tell you, deliver in full our arguments, and give the judgments of every one of us touching this case, as the way is thereof required; but we have not time to do so, and we have duly and formally considered of it, and of all that which has been spoken on either side, and we are agreed to a resolution, and my Brothers have agreed to deliver to you the resolution of the whole Court, and there is nothing fit to be delivered in my mouth, it is the resolution of the whole Court, I hope I shall not mislike the thing of their intention in so delivering; but I do, you are fit here by me, and I shall not take it ill if they say, let us.

Therefore I must tell you, there hath been many good learnedly spoken at the Bar, which we shall not touch, or give our Resolution upon, but send our resolution to the Bar in judgment here.

These three Statutes, as for example, the Statute of *Magnum Charta*, 28 E. III. and 35 E. III. and the Statute of *Witchamere*, and do other Statutes that have been made, and particularly a printed of, we acknowledge and resolve, that they are not Law, and that they be of force; but the last of them of which is most belongs not to us, for we are sworn to another power, and though the meaning of them broken to the use of the oil, yet our judgment shall be the same, for the which is now to be judged by us in this, Whether our that is committed by the King's authority, and so cause the red of his commitment, coming as this, it is upon this return, whether we ought to deliver him out, or to send him back again? Whether you must know this, your Counsel I will tell you, we can take notice only of the return, when the case appears to come to us in return, than by the return, we are not bound to search the truth of the return, but the sufficiency of it, for there is a great difference between the false, and the truth.

We cannot judge upon rumors or reports, but upon that which is set forth as returned, and therefore the Return is considerable by us, while it be sufficient or not.

The exceptions which have been taken to this Return were two: the one for the form, the other for the substance.

Vide this Record in Mr. Ballou's Argument in the Case, at, 3 of 4 Carole Regu, and to all the rest pages.

should have been better from them in that behalf, and you say they were bailed.

Ans. The Record in Mr. Sides's affidavit.

Now you shall for the direction to bail him, he was bailed by the direction from the Lords of the Council, as appears by their letter. *Fide* as aforesaid.

Now we come to *Croft's* case, in 8 *Janu.* you argued that to this purpose: you say he was committed to the *Marshal*, who upon a *Habeas Corpus* returned, that he was committed per *specialem mandatum domini Regis*, and you say, because the return was to general, the rule of the Court was, that it should be amended, or else he should be discharged. I will open to you what the reason of that rule was, for that notice was taken, that the Keeper of the prison had said a false return, and had usurped the name of the King; I know not how, but the commitment was not by the King's command, and that was the cause that he had a day given him to amend his return, but his lady was remanded in prison, as you shall see by the Record. *Fide* the Record, *Life*.

I be left you to say that you used, was that of Sir *Thomas Molyneux*, and that was to notice you, and to say, that I marvel that was offered at all, it might be judgment of all the rest, that was to no purpose; and now I have omitted none you brought me. *Fide* the Record.

By this Record you may see that he was committed by direct Lords of the Council, and it was for the suggestion of the death of Sir *Ysa. Ch. Henry*, and it is notoriously known, that he was brought hither to plead his pardon.

I will not tell you that you read all the precedents, for you read them, but argue them here before us, but we required you to bring them in, and they were brought to us, Mr. *Croft* brought them all but one, and that Mr. *N. H.* brought, it was in the 22 *Hen. VIII.* *Parker's* case; and our Mr. *Holmes*, a man whose face I never saw before, nor is he now in my memory, did rehearse being us one precedent to this purpose, and it was Sir *Ysa. Ch. Henry's* case, in 7 *Ysa.* he was committed to the *Castle*, and upon a *Habeas Corpus*, the Keeper returned that *Commissio fuit per Directionem Domini de Prædicto Consilio*, upon return *ignitur* in hoc verbo, viz. To the Keepers of the *Castle*, *et cetera*. *Fide* Mr. *Sides's* precedents, but the upon what ground he was bailed, it was a special command of the Lords of the Council. *Fide* the Record.

These are all the Records and Precedents that you mislead us to in your argument, and that were delivered unto us, for I have dealt faithfully with you; and now you have seen them in the case, I would have any man judge of the conclusion which you made the last day, then when a man is committed, and the case not known, but it is testified to be by the King's special commandment, and the *Habeas Corpus* is procured by yourselves and spread by the King, that we can discharge or bail them.

Then the precedents are all against you every one of them, and what shall guide us in this point, since there is nothing alleged in this case but process in 7 *Hen. VIII.* in case of the commitment be expressed, it is to be presumed to be for matter of State, which we cannot take notice of; you see we find none, not one, that hath been delivered by bail in the like cases, but by the hand of the King or his direction.

If we should take here, you see you have thrown nothing to bat *spes*, and we know that you that be of their Council, will satisfy your Conscience therein.

But you shall see that we have taken a little pains in this case, and we will show you these precedents on the other side, and I believe there be five hundred of this nature, that may be cited to this purpose. I shall go retrograde, and go backwards in citing the years of the precedents that I shall mention.

I will begin with 7 *H. VIII.* *Edward Poper*, he was brought hither by the Steward of the *Marshal*, who returned that he was committed per *mandatum domini Regis*, and he was remitted, so that he was not delivered upon this general return, but he was remitted.

The next was in 16 *H. VII.* these you shall see a precedent where one was committed, his name was *Thomas Joy*, he was committed for felony, and also per *mandatum domini Regis*, and the King's Attorney came hither and returned the King's command, and thereupon he was bailed.

Mr. *Nayr*. It is all one with *Parker's* case.

L. C. *Joy*. No; for here were two cautes of the commitment, *Holmes* was then the King's Attorney, and he signified in open Court that he was discharged by the King's command, and *Ejusque* *traher* in *habeas* *per* *specialem* *mandatum*.

The next was *Humphrey Brach*, 9 *H. VII.* *Ret.* 14. you shall find it much to that purpose as the other was before; he was imprisoned for an outwary, and by the commitment of the King also, and after that the release of the King's commandment was certified to the Chief-Justice, he was thereupon discharged. *Fide* the Record.

The next in 7 *H. VII.* *Thomas Brown*, *Ysa. Redding*, *Rufus Harston* and others, were committed per *mandatum domini Regis*, and for felony, outwary, and other causes, as appears by the Records, and after the King released his commandment, and that the outwary should be reversed, and for the felony he was bailed. *Fide* the Record.

So that you may see the offences mentioned in the Warrant for the commitment were eligible here, and when the King released his commandment they were bailed for the rest, but they that were committed by the commandment of the King were released by the King.

In 7 *H. VII.* the case of *William Bartholomew*, *Henry Carr*, *William Gyles*, and others, it is to the same effect, by all which you may see, that while the King released his commandment, they were bailed for the rest, and as they were committed by the King's commandment, so they were released by the King's command.

Now have I told trouble you with no more precedents, and you see your own what conclusion they produce. And as to these *Strong* precedents alleged on the other side, we are not wiser than that they were before us; and the common custom of the law is, the Common Law of the land, and

that hath been the continual common custom of the law, to which we are to submit, for we cannot not to change the law, but to submit to it.

As I have looked upon that precedent that was mentioned by Mr. Attorney; the resolution of all the Judges of England, in 34 *Edw.* We have considered of the time, and I think there were not but two, not have been since, more upright Judges than they were, *Way* was one, and *Andrieux* another; in *Edw.* Terms this was certified under the hands of all the Judges of England, and Barons of the Exchequer in a duplicate, whereof the one was delivered to the Lord-Chancellor, and the other to the Lord-Treasurer, to be delivered to the Queen. We have compared our copies, not taking them the one from the other, but bringing them; we have long had them by us together, and they all agree word for word, and that which Mr. Attorney laid, he had out of Judge *Andrieux's* Book, and it is to this purpose, to omit other things, that it is a man be committed by the commitment of the King, he is not to be delivered by a *Habeas Corpus* in this Court, for we know not the cause of the commitment. *Fide* this at the latter end of the fifth part of Mr. *Sides's* argument, as aforesaid.

But the question now is, Whether we may deliver this Gentleman or not? You see what hath been the practice in all the Kings times heretofore, and your own Records, and this resolution of all the Judges heretofore, and what can we do but walk in the steps of our forefathers? If you ask us which way you should be delivered, we shall tell you, we trust not could you.

Mr. Attorney hath told you that the King hath done it, and we trust him in great matters, and he is bound by Law, and he bids us proceed by Law, as we are faine to do, and so in the King; and we make no doubt but the King, if you seek to him, he knowing the cause why you are imprisoned, he will have mercy, but we leave that. If it be Justice we ought to deliver you, we would do so, but upon these grounds, and such Records, and the precedents and resolutions, we cannot deliver you, but you must be content. Now I have mistaken any thing, I desire to be lighted by my Brethren, I have endeavored to give the resolution of us all.

They continued in custody till the eighth of January following, when his Majesty in Council ordered all the imprudent Gentlemen to be released, and Writs being issued about this time for electing Members of Parliament, to meet March the sixth, those Gentlemen who suffered for the Lords, were released in many places. On the eighth of March the House met, and Sir *Ysa. Ch. Henry* was chosen Speaker. On the tenth, the House forced their Committee, and the next day spent in speaking the Grievances, as *Billing of Soldiers*, *Lawes by Knowledge and Propriety*, and the imprisoning certain Gentlemen who refused to lend upon their *Assents*, who afterwards bringing their *Habeas Corpus*, were notwithstanding remanded to prison, nor did the House incline to supply his Majesty till these Grievances were redressed.

To which purpose Sir *Francis Seymour* spoke thus:

THIS is the great Council of the Kingdom, and here (if not here alone) his Majesty may see as a true glass the state of the Kingdom; we are called hither by his Majesty's Writs to give him faithful counsel, such as may stand with his honour, but it is we must do without flattery: we are sent hither by the Command to discharge that trust reposed in us, by delivering up their just grievances, and thus we must do without fear: let us not therefore be like *Cambyses's* Judges, who being demanded of their King whether it were not lawful for him to do what in itself was unlawful? They, either to please the King, than to discharge their own consciences, answered, that the *Perseus* Kings might do what they listed. This false flattery tends to mischief, being false for respect both to justice, and to flattery, so fear takes away the judgment: let us not then be possessed with fear or flattery, of corruption the least. For my own part, I shall stand both the one, and speak my conscience with as much duty to his Majesty as any man, but not neglecting the Public, in which his Majesty and the Commons call me in place; but how can we show our Affection, whilst we mislead our fears? or how can we think of giving of Subsidies, till we know whether we have any thing to give or not? For if his Majesty be persuaded by any to take from his subjects what he will, and where it pleaseth him; I would gladly know what we have to give! It's true, it is all with those subjects that shall give laws to their Princes, and as all with those Princes which shall use force with their laws; that thus hath been done, appeareth by the billings of Soldiers, a thing no way advantageous to his Majesty's service, but a burden to the Commonwealth, it shall appear by the bill of *Money* against an Act of Parliament. Again, Mr. Speaker, what greater proof can there be of this, than the imprisonment of certain Gentlemen for the Loans, who if they had done the contrary for fear, their fault had been as great as theirs that were the prisoners in it; and to countenance these proceedings, hath it not been resolved (or rather printed) in our Pulpit, that all we have to do is the King's, *Thy Obedience* thy time-reckoner, they forsake their own functions, and turn ignorant Statute-men: we see how willing they will be to exchange a good Conscience for a Bellsopstick; and (Mr. Speaker) we see how easy it is for a Prince, how full and good to wit, to be abused, in regard he must see with other men's eyes, and hear with other men's ears. Let us not flatter his Majesty, it is too apparent to all the World, the King and people suffer more than ever before, his Majesty in his Affairs abroad, and his People in their estates at home: I hope I will know the reason of all this? Let us look backe the actions of former Princes, and we shall find that these Princes have been in greater wealth and extremity more exalted most of these subjects, and most unadvised in the choice of their Ministers, and to have failed most in their counsels, happy is that Prince that hath those that are faithful to his Council. This which his Majesty wanted in the management of his Affairs concerning France and Spain, I am sure, was his want of faithful Council to advise the reason in place, a Prince is brought by manifold and wide Council; I would I could truly say, such have been employed abroad. I will con-

* Mr. *Walsley* in his *Memorials of the English Affairs*, Page 2. (Edw. 12.) Sals. "One of the imprudent Gentlemen, by *Habeas Corpus* were brought to the King's Bench, and (by their Councils advice) took exceptions to the Return, for that it had not the cause of their Commitment, but of their Discharge as Prisoners, per specialem mandatum Regis." *Nayr*, *Sides*, *Bromfield*, *Gardiner* and others, who were out of Court for the Petition, joined they might be released and discharged.

Walsley the King's Attorney, in another day argued in maintenance of the Return. *Walsley*, Chief Justice, defended the opinion of the Court, that the Return was just and obligatory to the King's special commandment, and the suggestion of it by the Lords of the Council is only to transfer the Cause. And that the Habeas Corpus is not to be made in the case of the Imprisonment, but of the Detention in Prison, that the matter of this Return is justifiability, and the Cause is not to examine the truth of the Return, and must not be as it is. So did Petitioners were concerned.

"judged for the heir, and that the gift thereof by the Conqueror was void."

If then it were thus in the Conqueror's time, and by his own sentence and judgment, and hath continued in all the successions of our King's reigns since, what doubt can we have, but that his most excellent Majesty, upon his humble petition proffered at his feet, (which, as was well said, is the best passage to his heart) will vouchsafe unto us one ancient liberty and birth-right, with a thorough consideration of this and other just grievances? And is it humbly ever possible of this honourable House, that I have made a short lesson long.

Upon this and other arguments made in this *case of the Hobbs Corpus*, the House referred the whole business to a Committee, to examine all the proceedings: concerning which, Mr. *Selden* afterwards made report to the House, that Mr. *Peacock*, a Clerk in the Crown-Office, being examined before the Committee, did confess, that by direction from Sir *Robert Heath*, the King's Attorney-General, he did write the draught of a judgment in the case before-mentioned, which was delivered to Mr. Attorney. And Mr. *Kirby* being examined before the Committee did confess, that after Mr. *Heath* left, the Attorney-General withheld him to make a special entry of the *Hobbs Corpus*: to which, as he answered, he knew no special entry in those cases, but only a *Remitter*: but said to Mr. Attorney, that if he pleased to draw one, and the Court after should see it, he would then enter it. The Attorney did accordingly make a draught, and the Copy thereof Mr. *Kirby* produced to the Committee. And further said, that he carried this draught to the Judge, but he would not enter it in a special entry: nevertheless, the Attorney-General divers times told him, and told him there was no remedy, but he must enter it. Yet 2 week before the Parliament met, the Attorney-General called for the draught again, which accordingly he gave unto him, and never heard of it since.

Sir *Robert Philips*, upon this report, gave his opinion, "That this is indeed judgment in the *Hobbs Corpus*, with a draught made by some man, thus delivered to strike at our all our liberties, but the Judges justly refused it. But if the Judges did intend it, we fit not here (said he) to enforce the writ, we are first for, if we present not this matter to his Majesty. Let this business be further searched into, and let here this judgment lies against us, and what the Judges do say concerning "the law."

Whereon the House proceeded in further debate of the liberty of the subject. When

Sir *Harshall* resumed the debate of the matter concerning the *Hobbs Corpus*.

"The law judgment (said he) which lies in law, is only an award, and an judgment; and as the Lord Chief-Justice's argument, there was no writ spoken, that the King might commit or detain without cause."

"For the King to commit a man, is *ex officio Regis* Mercy and his power flows immediately from the King, Judgment and Justice are his too, but they flow from his Ministers, the sword is carried by force him, but the sceptre is in his hands. There are true emblem of a good King."

"The Law admits not the King's power of detaining in prison at pleasure."

In ancient times prisons were but *per vias, carceres* are of power, *sed ad usum*. Admit the King may commit a man, yet to detain him as long as he pleases in dangerous, and then a man shall be punished before his offence. Imprisonment is a satisfaction of the body, and hence to the mind, it is *in toto per merit*."

Then the House commanded that *case in the Lord Chief-Justice's Book*, all of his own hand-writing, to be openly read. The words of the Report were these:

Divers personarum fuerunt committes a feveral times a feveral persons,

per pleasure facere cum causa punit de quibus essent animes in hunc le

Roy. Et parte en fe Commune daret fuerunt accordant a la ley de la

torie made a large le discharge de le suppliance, par que aucuns grans

fuerunt offensus le procure un commandement a les Judges qu'ils ne fera

illust agere. Ces aient meens les Judges se faisoient mes per advice

enter eux le feissent certains Articles le tenoit de quous lettres, & deliv

per eux al Reigneurs Chancelier & Tresorier & eux subditis avec

leur leur maieres, les Articles meut cause calousit."

[We hear Majesty's Justice of both Bench, and Barons of the Exchequer, desire your Lordships, that by Letter good means some order may be taken, that his Majesty's Subjects may not be committed or detained in prison by commandment of any Noblemen, or Counsellor against the laws of the Realm, either else help us to have access to his Majesty, to the end to become freer to him for the same, for divers have been imprisoned for long ordinary causes and suits at the Common Law, until they have been constrained to leave the place against their wills, and put the law to order, albeit judgment and execution have been had thereon, to their great indignation etc. for the said of which petitions, her Majesty's Writs haveundry times been directed to sundry persons, having the custody of such persons unlawfully imprisoned, upon which Writs, no good or lawful cause of imprisonment hath been shewed or certified. Whereupon, according to the laws, they have been discharged of their imprisonment, some of which persons to deliver, have been again committed to prison in secret places, and not to any common or ordinary prison, or lawful Officer or Sheriff, or other lawfully authorized, to have kept a Gaol, & that upon complaint made for their detainer, the Queen's Courts cannot tell to whom to direct her Majesty's Writs, and by this means Justice cannot be done. And moreover, divers Officers and Sergeants of Leodes have been many times committed to prison for lawful executing of her Majesty's Writs, fund faith of her Majesty's Courts in *Widdowes*, and thereby her Majesty's Subjects, and Officers are tormented, that they dare not go or execute her Majesty's Laws, her Writs and Commandments: divers others have been sent for by Parliament, and brought to Leodes from their dwellings, and by unlawful imprisonment have been constrained, not only to withdraw their lawful wives, but have also been compelled to pay the Parliament, for bringing forth person, great sums of money. All which, upon complaint the Judge, are bound by office and oath to relieve and help, by and according to her Majesty's laws. And when it pleaseth your Lordships to will divers of us to sit down in what calls a prisoner, sent so custody by her Majesty as her Council, are to be detained in prison, and not to be delivered by her Majesty's Court or Judges, we think, that if any person be committed by

her Majesty's command, from her person, or by order from the Council-board; and if any one or two of her Council commit one for High-Treason, such persons to be in the cases before committed, may not be delivered by any of her Courts, without due trial by the law, and judgment of acquittal had: Nevertheless the Judges may award the Queen's Writ to bring the bodies of such persons before them; and if upon review thereof, the causes of their commitment be certified to the Judges as it ought to be; then the Judges in the cases before, ought not to deliver them; but to remand him to the place from whence he came, which cannot be conscientiously done, unless notice of the cause in general, or of one in special, be given to the Keeper or to other that shall have the custody of such prisoners. All the Judges and Barons did subscribe their names to these Articles, *For Petition* 34. *Edw.* and delivered one to the Lord-Chancellor, and another to the Lord-Treasurer: after which time there did follow more quietness than before, in the case before-mentioned.]

After the reading of this Report, Sir *Edward Coke* said, That of my own knowledge this Book was once with my Lord *Arden's* own hand, it is no flying report of a young Student. I was Solicitor then, and Treasurer *Barthol* was as much against commitment: as any of this Kingdom, it was the *Barthol* that made this libel. Let us draw towards a conclusion: the question is, Whether a Freeman can be imprisoned by the King, without shewing cause? I hear it as late as *Rogers's* Case, they to it argue against it, *Hamer* not to be remanded, *Barthol*, that in case it is, the Common Law has alienated the King's Preerogative, that it would be a prejudice the inheritance of the subject, and the Law gives the Preerogative to that which is taken, it would have been time then, they, the more what would follow. I shall have an Estate of inheritance for life, or for years in my land, or property in my goods, and I shall be content at will for my liberty, I shall have property in my own lands, and not liberty in my person, *For person was not for sale*. The King, both distributed his judicial power to Courts of Justice, and to Ministers of Justice, it is too low for so great a Monarch as the King is, to commit men to prison; and as against law, it must be held to be committed, and no contrivance. I would not press this, but that I hope my good friend will hear of it; yet it is not I *Edward Coke* that speaks it, but the Records that speak it. We have a national property Law in this Nation, *which is the law*.

I was first heard, and testified we live and liberties of the subject first time. Since I came, I look here on oath to defend the King's prerogatives and rights. I profess, that once I was of Council, and now I speak for my try, for the Gentlemen in the *Hobbs Corpus*, yet now I speak according to my knowledge and common sense.

The question is, whether any subject or Freeman, that is committed to prison, and the cause is not shown, is in the Writs, he ought to be bail or delivered? I think, I could desire it belongs to every subject that is not a Villain that he ought to be bail, or delivered.

I shall speak in this course. 1. I will show the reasons. 2. Acts of Parliament. 3. Precedents. 4. Answer objections.

1. Reasons drawn from three heads.

1. From remedies provided by the Common Law against imprisonment.

For persons that of liberty there are of more remedies, by which it appears, if no law will cause it, further detainer, he is to be delivered. I will not mention the action of *habeas corpus*, but the Writ of *ad idem*, which is not taken in law, for that it is in *Magistris Charta*. That Writ was first to know, if the party imprisoned were committed for any cause of malice and hatred, and that was not to be required in 3 day. For the Writ de *habeas corpus*, if he is imprisoned upon a writ, the Sheriff, he must be delivered, if he be not detained for a cause for which he is not responsible. For the *Hobbs Corpus*, the Keeper is to bring the body of *judicandum* or *reipondere*. If there be no cause, how can the Court consider of the cause? For appeal, by the old law in the time of *Hen. I.* one imprisoned might have his appeal, as appears by *Bracton*, c. 25. *lib. de personis*. *Plato*, c. 43.

2. The second reason is from the consideration of Freeman and Villains. All admit we are *liberi homines*, but do but consider the difference of Villains and Freeman, and I know no difference in their persons, but only the one cannot be imprisoned, as the other may. Whoever can lay I can imprison him, I will say to us a Villain. It is the sole distinction of Freeman, that they cannot be imprisoned at pleasure.

In old time none but *Freemen* and Villains could be imprisoned, and confined. The *Freemen* were as *free* as the Villains of the King, he could send to them to lend money, and if they did not, he imprisoned them.

For matter of punishment. When any thing is declared by any new Statute to be an offence, it goes, That he shall be fined and imprisoned. To what end were this in any Act of Parliament, if imprisonment was at the King's will?

II. For Acts of Parliament, *Magistris Charta*, c. 19. In that Act when it was first made, it was an *act in common animis*, 17. *lib. de Statute* was made, and then it had their words. The course then was to find down all Acts of Parliament and Charters to the Abbey to be enrolled. *Magistris Charta*, 34. *lib. de Statute* recites that Charter of 17. *lib.*

They object in *Magistris Charta*, there is *in terra*, and by the law one may be imprisoned.

For answer is the process of law, for the law imprisons no man at all, but it is more the process of law, 3. *Edw.* III. Upon some occasion it was enacted, I but now be attached contrary to the great Charter and the law of the land. 25. *Edw.* III. divers were committed to the Tower, and no man knew wherefore, whereupon was 25. *Edw.* III. made, 28. *Edw.* III. c. 3. 36. *Edw.* III. c. 9. an *act* imprisonment, *per personam* *inducendum*.

III. For Precedents, 18. *Edw.* III. c. 33. *Hen. I.* *Hen. VIII.* c. 10.

IV. Objections against it. *First*, Against the reason, a man may be committed for a point of State that may not be known: I understand not matters of State, I expect not the objection in a Court of Justice, and it may be a word for any King to try the courage of his Judges, and to suppose there is a cause of State, when perhaps there is no cause against to them. It is as if they sent him back to prison, they knew not wherefore; which cannot be in a Court of Justice, where they are sworn to judge.

Secondly, as to the Acts of Parliament, the Judges give no answer, but only contended them; but the Attorney answered them with one blow to strike them all; that they are to be considered for common and ordinary cases, that happen in *Windsor-hall* only. But do not consider *Alagna Clerie*, which respects upon the King; an *Appel* can be made. By the Law, if I bring an *Appel* of Murder against a Nobleman, who is in my fault, he shall not be tried by his Peers; but if he be indicted for Murder, which is the King's fault, he shall; which shews, that but which is in *Alagna Clerie* is meant of the King, though it be not in this third Person.

This Objection is against the Statute of *Windsor* 1. c. 13. But the King's command is the command of the King by his Justice; and also the word, *Replevibile*, never signifies bailable; bailable is in a Court of Record, by the King's Justice; but replevibile, is by the Sheriff. The Statute is to the Sheriff, and it shews the particular cause, and concludes that the Sheriff shall lose his bailiwick. The Sheriff could never excoise for M. riel, or matters of the Forest; but in the *King's Bench* or *Mares*, or matters of the Forest they may, 3. *aff. 19. 25. Edw. IV. 25. Hen. VI. 48. Novus*. If any may be taken by our command, or by the command of the King, if the Sheriff take the party, he must come to us, we will grant a *Writ*.

Fourthly, They object against the precedents cited; they are all of this kind, they were supplied per mandatum domini Regis, or Consilii, without cause, or the cause is exposted. When the cause is exposted, and is within the cognizance of the Court, there they hailed them; but when it is for Felony or Treason, it may be done beyond the seas, and then the Court has no cognizance of them. When so cause is set, yet bailment is allowed; then they answer divers were to hailed, but the cause appears by Paper-Books; but I never saw these Books to be Records, and Judges of Record make their judgment in Records, and the cause only appears by Record.

But the Resolution cited 34 *Edw.* all precedents were read, Acts of Parliament indeed were pulled over, and yet that was not read. As we have that liberty here, I do dare say, no Prince in *Christendom* doth afford this power to imprison any without any cause. I find no trace or signification of any such power.

Secondly, March 29, 1628. Mr. Sollicitor spoke as followeth:

My care when I spoke last was to give satisfaction that the Judges did not set their law Resolutions; but if they did, it was then pertinent. The Judges know nothing of the cause of the Government's imprisonment; if they had known the cause of their imprisonment in private, they would have appeared to his Majesty for his Grace. For to restrain all the authorities I will not, I have something to say in the point, to put into the scale, which might have been then said, had it not been for the unwelcome difference that might have been between the two Courts in *Windsor-hall*, the *King's Bench* and the *Chancery Court*.

In 13 *Jac.* divers were committed for disobedience to the Decree of the Court of Chancery, as namely *Rafford* and others, and it was resolved, That the Judges could not deliver such; and at the same time some were committed by Warrant from the King and the Lords of the Council, and this came in *Qualific.* *Mich. 13 Jac.* and continued divers Terms. There was then recourse had to these arguments, and I have a report here of that time what the Judges did then, part whereof I will read.

It was resolved by *Coke*, *Crom*, *Darbridge* and *Hargrave*, that the return was good, and that the writs need not be dissolved, being per mandatum Consilii, as *Arden* *Regis* (and the report followeth) that in 34 *Edw.* it was resolved accordingly, and by *Coke* was said, That if the Privy-Council consent, one is not bailable by any Court of Justice, and *Stanford's* opinion is so, fol. 72. See what opinion the Judge had of the resolution in 34 *Edw.* and of *Stanford*.

To this Sir *Edward Coke* replied: This report moves not me at all; that report is not yet twenty-one years old, but under age, being in 13 *Jac.* In truth, when I read *Stanford*, I was of his opinion at the first, but since, looking into these Records before-mentioned, I was of another mind. It brings in an ill time 13 *Jac.* when there was clashing between the Court of *King's Bench* and *Chancery*, as also there were then many of the Traitors that were of the Powder-Treason, committed per mandatum Consilii.

A CONFERENCE desired by the Lords, and had by a Committee of both Houses, concerning the Rights and Privileges of the Subject.

Sir Dudley Digges.

My Lords, I shall, I hope, sufficiently begin this conference this day, with an observation out of an Holy Story, in the days of good King *Jehoiakim* (2 *Chron.* 34.) when the Land was purged of Idolatry, and the great men went about to repair the House of God; while money was sought for, there was found a Book of the Law which had been neglected, and afterwards being presented to the good King, procured the blessing, which your Lordship may read in the Scriptures. (2 *Chron.* 34.)

My good Lords, I am confident your Lordships will be cheerfully join with the Commons, in acknowledgement of God's great blessing in our good King *Jehoiakim*, as the King, Citizens, and Burgeses of the House of Commons, by their unwearied cry, do thankfully remember his most religious and truly honorable invitations of them to the late Parliaments, for cleaning this Land from Popish abominations; which I may truly call a necessary and a happy repairing of the House of God. And, to go on with the parallel, whilst we the Commons, out of our good affections, were seeking for money, we found, I cannot say a book of the Law, but many, and those fundamental points thereof neglected and broken, which hath occasioned our desire of this conference; wherein I am fully commended to them to your Lordships in general, that the Laws of England are grounded on reason, more ancient than books, consisting much in common customs, yet so full of justice and true equity, that your most

Upon Monday, April 1, the debate began at seven o'clock. Sir Robert Phelips moved, That considering the House was now ready for the Question, it might have the resolution made, (fall the Judges in 34 *Edw.* about this matter.)

Then Sir *Edward Coke* stood up and said, The Clauses of Time was over, and forcing out upon as both retarded us; when I spoke against the Lease and this matter, I expected blows, and indeed that was spoken, though not to the matter.

Cause, saying that (that hath been objected) I did when I was a Judge, I will say I know not. Indeed a man was made, but no argument of debate, or a solution upon advice, I will never publish with any House, there is no Judge that hath an upright heart; I could and a clear heart as the world, but I shall leave *Warren* to say every thing that he doth. I conclude when I read *St. John's* 1. c. 13, and had it in my hands, I was of that opinion as the Council I dare say, when I perceived that some Members of this House were taken away, even in the face of this House, and sent to prison, and when I was not off from it, that place myself. I went to my book, and would not be quiet till I had finished my life. *Stanford* at the first was my guide, but my guide had departed, so, therefore, I moved from it. I have now better guides, Acts of Parliament and other precedents, there are now my guides. I desire to be free from the imputation that hath been laid upon me.

As for the copy of the intended Judgment, I fear, had it not been for this Parliament, I had it in my hand, as this was a Parliament brings Judges and all other men into good order; if any Judge had drawn this draught, he would have done it to a scandal, and there can be no precedent found that warrants it, and therefore I believe that other others did it.

This draught of the judgment, should it be entered, will bring us to death, *quis vult capere vitam, eam perdat*, and it seems that it appears to be by the Records. I posted myself till, Attorney drew it; I had a copy of my Lord *Arden's* report of the Judges' resolution, 34 *Edw.* long ago, but I don't recollect it (and it was in that copy) for that it was *Apocryphal*, and did not deliver his sanity that made it, and yet it was cited in the King's Bench. That all the Judges of England read it.

Then the House of Commons came to the following Resolutions.

Resolved upon the questions, *Memor. contrahentes*.

I. That no Freeman ought to be detained or kept in prison, or otherwise restrained by the command of the King or Privy-Council, or by other, unless some cause of the commitment, detainer, or restraint be exposted, for which by Law he ought to be committed, detained or restrained.

II. That the Writ of *Habeas Corpus* may not be denied, but ought to be granted to every man that is committed or detained in prison, or otherwise restrained, though it be by the command of the King, the Privy-Council, or any other, he praying for the same.

III. That if a Freeman be committed or detained in prison, or otherwise restrained by the command of the King, the Privy-Council, or any other, no cause of such commitment, detainer, or restraint being exposted, for which by Law he ought to be committed, detained, or restrained, and the same be returned upon *Habeas Corpus*, granted for the said party; then he ought to be delivered or bailed.

And then taking into consideration the Property of the Subject in his goods, they came to this Resolution, to which there was not a negative; viz.

That it is the ancient and indubitable Right of every Freeman, that he have a full and absolute property in his goods and estate; that no Tax, Tallage, Loan, Benevolence, or other like charge ought to be commanded or levied by the King, or any of his Ministers, without common consent by Acts of Parliament.

The Commons having shewed their Care of the Subjects in the Liberty of their Persons, and Property in their Goods, did now prepare to transmit their resolutions to the Lords for their concurrence, and several Members were appointed to manage a conference with the Lords concerning the same; and Monday, April the 7th, the conference was held, and opened by Sir *Dudley Digges*.

honourable Predecessors and Ancestors many times propounded them with a solemn matter; and so ancient, that from the *Saxon* days, notwithstanding the injuries and ruins of time, they have continued in most parts the same, as may appear in old remaining monuments of the Laws of *Edward*, the first Christian King of *Brit.* the King of the *West-Saxons*, *Offa* of the *Mercians*, and of *Alfred* the great Monarch, who united the *Saxon* Kingdoms, while Laws are yet to be seen, published, as those that, by Parliament, as he lives to that end, *Ubi sit sit regis, sit sua lege regem*. And though the book of *Edward*, speaking of the troublesome times of the *Saxons*, says that then *Ubi sit sit regis, sit sua lege regem*, *Ubi sit sit regis, sit sua lege regem*, yet, by the blessing of God, a good King *Edward*, commonly called *St. Edward*, did awake those Laws, and as the old words are, *Restituit, repositit, repositit decreta, decreta confirmavit*. Which arguments shew, that good King *Edward* did not give such Laws, which *William* the Conqueror, and all his Successors, since that time have been since.

And here, my Lords, by many cases frequent in our modern Laws, disagreeing concerning with those of the ancient *Saxon* Kings, I might, if time were not precious, demonstrate that our Laws and Customs were the same.

* *De Heredit. Mat. sit.* Title to make a Motion. Yesterday a learned Argument was made by Mr. Sollicitor, and Sir *Zach.* I was cited by him, which makes clearly for the Subject, also for that *Johanna* party. I am sure that *Johanna* party of *Johanna* party. And *Johanna* party of *Johanna* party. By the Law of the Empire were to be committed those thirty days, and the Order is under a penalty to certify the cause of the Privilege's commitment; and if the Order be such, he is to be held. When they speak before the Judgment given to the *King's Bench*, they say the Precedents were not read. Let a Sub-committee search out those judgments and Precedents. I heard here a question, and there is nothing to be considered. The Cause of the Office is to enter process, &c. and that is all they be delivered by Law, and is all the Judgment that can be. *Ex Mili. Zephania.* See *Advers. lib. in his Works*.

1. *Coke* was then a Judge, and is *Errol* at Court.

2. *Coke* of one mind, when a Judge, and is *Errol*; of another, when out of Court, and disinterested.

he were delinquent, or not, or not. 2. Is *ignis* expressly, that he was brought thither, and brought in an *Adiutor* of it, as another Man's fault, no defect of his own, is so delivered, or bailed, and then if he were remanded, it is as we say, manifest to the question in hand. But that which is most relied upon, is the opinion of *Steynf* in his Book of *Pleas of the Crown*, lib. 8. cap. 13. fol. 72. 73. in his Chapter of *Mainprize*, where he reciteth the statute of *Witton*, l. c. 15. and then saith thus. "By this statute it is appointed, that in four cases the Common Law a Man was not repleviable, 1. to wit, those that were taken for the death of a man, by the command of the King, or his Justices, or for the French;" thus far he is well right. Then he saith, "and 2. As to the command of the King, that it is understood by the command of his own mouth, or his Council, which is interpreted in two, and spoke with his mouth, or otherwise every *Wit* or *Captain* to take a man, which is the King's command, would be as much; and 3. to the command of the Justices, that is meant that it is a delate commitment, for if it be by their ordinary commitment, he is repleviable by the Sheriff, if it be not in some of the cases prohibited by the Statute."

The answer that I give unto this is, that *Steynf* had said nothing whether a man may be committed without such by the King's command, or whether the Justices ought not to bail him in such case, only that such a case is not repleviable, which is agreed for that he is well right. And because no man should think he meant any such thing, he concludes the whole sentence touching the command of the King and the Justices, that one committed by the ordinary command of the Justices, is repleviable by the Sheriff, or at least it appears not that he meant that a man committed by the Justices, and he hath given no opinion in this case what he would have said, if he had been asked the question, cannot be known, neither doth it appear, that by any thing that he hath said, he meant any such thing, as would be inferred out of him. And now, my Lords, I have performed the commands of the Commons, and as I move shall clear the delation of personal liberty, an ancient and undoubted right, furnished with seven Acts of Parliament, and not repeated by any Statute or Authority of Law whatsoever. So *Luttrell* is repeated after *Mr. Selden*.

Mr. Selden's Argument.

MY LORDS, Your Lordships have heard from the Gentleman that last night, a great part of the grounds upon which the House of Commons, upon mature deliberation, proceeded to their resolution touching the right of the liberty of their persons. The many Acts of Parliament, which are the written Laws of the Land, and are expressly in the point, have been read and opened, and such objections as have been by some made to them, and some objections also made out of another Act of Parliament, have been cleared and answered. It may seem now perhaps (my Lords) that little remains (needful to be further added, for the enforcement and maintenance of so fundamental and established a right and liberty belonging to every Freeman of the Kingdom. But in the examination of questions of Law of Right, besides the Laws or Acts of Parliament, that ought chiefly to direct and regulate every man's judgments, whatsoever hath been put in practice to the contrary, there are commonly used also former judgments, or precedents, of Law, and of Acts of Parliament, both been laid by, and relations have been made, and that in this very point, only upon the interpretation and apprehension of precedents. Precedents, my Lords, are good modes, or proofs of illustration or confirmation where they agree with the express Law; but they can never be proof enough to overthrow any one Law, much less seven several Acts of Parliament, as the number of them is for the point. The House of Commons therefore taking into consideration, that in this question, being of so high a nature, that never any exceeded it in any Court of Justice whatsoever, all the several ways of just examination of the truth should be used, have also most carefully examined themselves of all former judgments and precedents concerning this great point either way, and have been so less careful of the due prosecution of his Majesty's just Prerogative than of their own Rights. The precedents here are of two kinds, either merely matter of Record, or else the former resolutions of the Judges, after solemn debate in the point.

This point that concerns precedents, the House of Commons have commanded me to present to your Lordships, which I shall as briefly as I may, lay I do it faithfully and perspicuously. To that end, my Lords, before I come to the particulars of any of those precedents, I shall first remember to your Lordships, that which will seem as a general key for the opening and true apprehension of all these Records, without which key, no man, unless he be very in the nature and course of the King's Bench, can possibly understand them.

In all cases, my Lords, where any Right or Liberty belongs to the Subjects by any positive Law written or unwritten, if there were not also a remedy by Law, for the enjoying or regaining this Right or Liberty, when it is violated or taken from him, the positive Law were well vain, and to no purpose; and it were to no purpose for any man to have any Right in any land or other inheritance if there were not a known remedy, that is, an *Adiutor* or *Writ*, by which, in some Court of ordinary Justice, brought recover it. And in this case of Right of Liberty of Person, if there were not a remedy in the Law for regaining it, when it is violated, it were of no purpose to speak of Laws, that ordain it should not be violated. Therefore in this case also, I shall first show you the remedy that every Freeman is to use for the regaining of his Liberty, when he is against Law imprisoned, that is upon the legal course and form to be held in using that remedy, the precedents or judgments upon it, for all Judgments of Record life out of this remedy, may be easily understood. There are in Law diverse remedies for violating of a Freeman imprisoned, as the Writs of *Adiutor* *Adiutor*, and of *Habeas Corpus*, besides the common or most known Writs of *Habeas Corpus*, or *Corpus cum causa*, as it is also called.

The first two Writs are so to be directed to the Sheriff of the County, and he in some particular cases, or in which it would be suitably for me to trouble your Lordships, because they concern not that which is committed to my charge. But that Writ of *Habeas Corpus*, or *Corpus cum causa*, is

the highest remedy in Law, for it is writ that is imprisoned, and the only remedy for him that is imprisoned by the special command of the King, or the Lords of the Privy Council, who have power of the commitment; neither is there in the Law any such thing, as was there ever committed of any such thing in the Laws of this land, as a Person of Right to be imprisoned in such cases for Liberty of the Person, nor is there any legal course for enlargement to be taken in such case, if howsoever the contrary hath upon no ground or colour of Law been pretended. Now, my Lords, if any man be so imprisoned by any such command, or otherwise, in any prison whatsoever through *Exigat*, and define by himself, or any other in his behalf, this Writ of *Habeas Corpus* for the purpose in the Court of King's Bench, the Writ is so to be granted to him, and ought not to be denied him, no otherwise than another ordinary original Writ in the Chancery, or other common process of Law may be denied; which amongst other things the House resolved also, upon mature deliberation, and I was commanded to let your Lordships know to such. This Writ is directed to the Keeper of the prison, in whose custody the prisoner remains, commanding him that after a certain day, he bring in the body of the prisoner, and deliver it up to the judge, *justis quodcumque confiderentur, et sic cum causa capere et detinere, et aliter non cum causa detinere* only, *capere* is being committed.

The keeper of the prison therefore returns by what Warrant he detains the prisoner, and what reason he hath for it, brings the Prisoner to the Bar at the time appointed; when the matter is thus made, the Court judges of the sufficiency or insufficiency of it, only out of the body of it, without having respect unto any other thing whatsoever; that is, they suppose the return to be true whatsoever it be. If it be false, the prisoner may have his action on the Case against the Keeper that brought him. Now, my Lords, when the prisoner comes thus to the Bar, if he desire to be bailed, and that the Court upon the view of the return think him in Law to be bailable, then he is always first taken from the Keeper of the prison that brings him, and committed to the Marshal of the King's Bench, and afterwards bailed, and the entry perpetually in *Commissio* *Magistratus* *et* *justiciarius* in *Roll* for the Court never bailing him, until he first becomes their own prisoner, and is in *Carcer* *Magistratus* of that Court. But if upon the return of the *Habeas Corpus*, it appear to the Court, that the prisoner ought not to be bailed, nor discharged from the prison whence he is brought, then he is remanded or sent back again, there to continue, until by course of Law he may be delivered; and the entry in this case is *Remittitur carceris* *francigenis* *legem deliberatam* *juris*, or *Remittitur carceris* *juris*, which is all one, and the highest act or judgment that ever was or can be given upon an *Habeas Corpus*. But if the Judges doubt only whether in Law they ought to take him from the prison where he came, or give a day to the Sheriff to amend his Writ, as often they do, then they remand him only during the time of their doubt, or until the Sheriff hath amended his return, and the entry upon that is *Remittitur* only, or *Remittitur prisonis* *post*, without any more. And to remittitur generally it is of less moment in the award upon the *Habeas Corpus*, than *remittitur prisonis*, &c. howsoever the vulgar opinion raised out of the late Judgment be to the contrary. All these things are of most known and common use in the Court of King's Bench, as it cannot be doubted but your Lordships will easily know from the grace and learning of my Lords the Judges.

These two courses, the one of the entry of *Commissio* *Magistratus* *et* *justiciarius* in *Roll*, and the other *remittitur prisonis*, &c. is *remittitur* generally, or *remittitur prisonis* *post*, together with the nature of the *Habeas Corpus*, thus stated it will be easier for me to open, and your Lordships to believe, whatsoever shall occur to the purpose in the precedents of Record, so which I shall come now in the particulars. But before I come to the precedents, I am to let you know the resolutions of the House of Commons touching the releasing of a man committed by the command of the King, or the Privy Council, or any other, without cause showed of such commitment. It is thus, That if a Freeman be committed or detained in prison, or otherwise released by the command of the King, the Privy Council, or any other, and no cause of such commitment, detainer, or restraint be expressed, for which by Law he ought to be committed, detained or restrained; and the same be returned upon an *Habeas Corpus* granted for the party, then he ought to be delivered and bailed.

This resolution, as it is grounded upon the Acts of Parliament already shewn, and the reason of the Law of the Land, which is committed to the charge of another, and soon also to be opened to you, is strengthened also by many Precedents of Record.

But the Precedents of Record that concern this point are of two kinds, for the House of Commons hath informed itself of such as concern in either way. The first, I shall shew expressly, that Persons committed by the command of the King, or of the Privy Council, without other cause showed, have been enlarged upon bail when they prayed it, whence it appears clearly, that by the Law, they are bailable, and by the *Habeas Corpus* to be let at liberty. For tho' they ought not to have been committed without a cause showed of the commitment, yet it is true that the reversed Judges of this Land did pay respect to such commitments, by the command of the King, or of the Lords of the Council, (as also to the commitment of some of inferior persons) that upon the *Habeas Corpus*, they rarely used officiously to discharge the persons indubitably, but only to enlarge them upon bail, which is manifestly against the Liberty of the Subject, according to the Laws that your Lordships have already heard, not in any of the cases is there any difference made between such commitments by the Lords of the Council, that are incorporated with him. The second kind of precedents of Record are, such as have been presented to prove the Law to be contrary, and that person to be committed ought not to be let at liberty upon bail, and are in the nature of objections out of Record.

I shall deliver them hither to your Lordships with all truth, and also true copies of them; out of which it shall appear clearly to your Lordships, that of those of the first kind, there are no less than twelve, most full and directly in the point, to prove that persons to be committed are to be delivered upon bail; and amongst those of the other kind, there is not so much as one, not one, that proves at all any thing to the contrary. I shall first, my Lords, go through them of the first kind, and in observe them to your Lordships, that such examples as have been made upon them by some that

...he had been nine
...The case left closed in

that is, the other, clears this.

So far as I know, *Page 7 H. VII. Ret. 13*, John Remond's case is the same in all ways with those other two, and the self-same answer still satisfies. (1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550,

[illegible]

The cry like is in *Ent. g. H. V. L. Rev. 14*. The c. of *H. Beale*, which proves no more far than the rest of this kind already c. ed.

[illegible][illegible]

Next is *Hobbes*, 431 ff. Rat. Ep. when divers Gentlemen of the City by force were imported by the command of the Privy-Council, the Citizens being grievously displeased to enlarge them, sends a commandment to the Judges of the King's-Bench, that they should take care, for determining them upon such as they should think fit: and they did so, and enlarged them upon such as they thought fit: and they did so, and enlarged them upon such as they thought fit. Follows it thereof, that this might not have been done by Law, if the parties themselves had endured it?

So in *Tram.* a *Jen. rec.* 30. Sir John Smith being committed to the Gatchaife, is returned to Bondswomen per wanden prison Cauchy, and he is enlarged everisworn a Graille prindils. But the same answer that comes for the rest before cited. Arrive for this affe.

The latter of these, in *Rogers's* tale, in *Black Lion*, vol. 119. He was committed to the Galleys by the Lords of the Council, and being brought into the King's Bench by *Halow Corpus*, a married upon bail; but still they lay was upon a letter written from one of the Lords of the Council to the Judges. It is true, that such a letter was written, but the answer to the former precedents of this nature, are sufficient to clear this

1. 'That it appears not, that the party ever desired to be enlarged by the Court, or was denied it.

2. Letters with r from the King or Council cannot alter the law in any case. So that hitherto nothing hath been brought on the contrary part, that hath was false, or colour of reason in it.

We come, now, my Lords, to those precedents of the other square cited against the liberty of the subject: that is, such as have been said to include the persons to whom they may not be applied by the Court.

The first four of them are exactly in the same words, saying that the names of themselves and the persons differ, I shall therefore recite them all one after another, and then clear them together.

The first is *Rubens's* *Edward's* *hall*, *Hall*, 7 *Edw.* VII. *ru.* 18. He and others were designated to the *Martyr's* of the Household, *per* *monasterium* *Regis*, and so returned upon a *Baron's* *Corpus* into the King's Bench, whereupon the entry is: *by* *the* *monasterium* *Mari*, *etc.*

The second of *Diels & Han. VII.*, Richard Cherry's tale; he was committed to the Mayor of *Hindjir*, per manuscript *deus Regis*, and I ret. and upon a *Helio. Corvus*, and the entry is only, *Deus esse nunc. Marc. 17.*

The third is *Hall, 9 Hec. VII. no. 14*. On *Stephen Barret's* wife, who was committed to the *Albion* of the Household, per mandatum domini Regis, and so returned up in an *Holborn Carpent*, and the entry is likewise, *By consent of Alms. &c.*

The fourth is *George Wyndham's case*, Pp. 150-155. VII. 24. 19. He was connected to the Sheriffs of London, *per mandatum domini Regis*, and returned to serve his *Hobbs Crown*. The commission *March* 17.

These four have been used principally, as expert precedents, to give that a preference to committed cannot be enlarged, and perhaps at the first sight, so men that know not, and observe not the cause and reason of it.

night, to men that know not, and strive not the course and end, nor the Court of King's Bench, they may be approached to prove as much: be- lieve in truth they rather prove the contrary, at least there is no colour in them of any fault, either in their being seized for. To repeat myself, I be-

of any such matter: they have been used for, To which purpose I be-
 lieve your Lordships to call to your memories, that which I first observed
 to you touching the course of that Court. When a professor is enough
 in the *Prætorian* Court, he is to be heard as a commander, not as a

in by John Coyle, he is [if he be of to be remained] full come into the Marshal on the Court, and thus baid as his case requires, "this is to certify, as it can never be otherwise. Now the men bring thus com-

in cited = the explicit command of the King, are left, you let, taken I = the prison whither they were first committed; whereas you may observe, my Lords, that if a general suspension of matter of State were at force, it

at such a case, it might be too difficult in spirit of State, to have the professor remain at his post, where the King will furnish an abject commandment, and instead him, to have him still come on . . . When they had taken them from the place where before — they were, they carried them to the Marshall of Orleans Coast, which was the first step to building there. Now it seems so indeed that they were hailed, as then *Treacher* a Ball had felt well, as nothing, as it appears that they were denied it, perhaps they could not, or rather could not and luck as were sufficient to build them. And in return, which was the last thing that they did, the prince in a *Rapier* would be for Diable or *Saint*, only /me that Court, no entrance had in the *Rapier* for Diable as in their *flag* safe.

[illegible][illegible][illegible]

The seventh of them, the wife of *Jean Desjardins*, *Edouard Durbin*, and a few others that were there, are now connected to the *Marchés* of the Hospital, for *Edouard Durbin* has, and is returned upon *Hôtel Capet*, and it is true, that the mill flows that they were remained, but the remaining one only upon advantage. And indeed the grave and upright judge of that time, who is a noble, left upon the entry of the resistance, they had a number of it, a single perhaps without posterity is to that point, that the world, especially here, the word (innocent) is to be the *Resurrection*, that is all that the world must with the roll of the *Marchés*, and the *Marchés* of the *Marchés*, and not upon any degree in the section. And behind, that the world is a great one, which is really added, where the light award upon the roll of the *Marchés*, which kind is a noble, where.

The second strike is, the call of *Schlagad*, i. e. *Hill*. 12 Jan. Sir James Balfour was committed to the *Prig*. He would have been a *Regis*, and been in the Court of *Prig*, for disobeying an order of that Court, and it turned upon his *Hill*. *Cryps*, to be there or not. And it is true that a *Regis* is a *Prig*. But it is only a *Prig*.

...but, for all that, it is not a *per se* violation of the Fourth Amendment, and it is not an *ex post facto* law. ... The Court gave the *Waller* officers three full oral and written times to amend the return, and in the interim *Waller* was *free* and. ... Certainly if the Court had thought that the return had been good, they would not have given the officers 14 days to have amended it, for at that measure a *de novo* right had been sufficient in the case, why not a *de novo* amendment?

The north and tail of this is, δ , 127° , α , 6° , i. the end of the line is S , 30° , 10 miles; it is returned by M , under the K , on the east before, and generally, round the δ in the δ , which gives nothing at all, that there is the Court thought to be not by, lay be enlarged, and be done.

Thus, all that have been possible for the *seigneur* in this great point, and upon the view of them the *seigneur* is to your Lordships, it is plain

it being added for that letter, or any testimony of it, he could produce none at all; but said, he thought the testimony of it was burnt, among many other things of the Council-table at the burning of the Banqueting-House.

To the 9th, being *Hammerton's case*, *Fafile*, 40 *Elix. Ret. 62*. the self-same objection was made by him, but no warrant was shewed to maintain his objection.

To the 10th, which is *Catby's case*, in *vacancies Hill*, 43 *Elix. he said*, that it was by direction of a Privy-Council from the Queen; and to that purpose he shewed the Privy-Council of 43 *Elix.* which he at large among the transcripts of the Records concerning bulls taken in cases, where the King or the Lords attended. But it was replied, that the Privy-Council was made only for some particular Gentleman mentioned in it, and for none other, as indeed appears in it; and then he said, that it was likely that *Catby* here had a Privy-Council in this behalf, because these other had say which was all the force of his objection.

To the 11th of these, which is *Bushell's case* in *Hill*, 23 *Jac. Ret. 159*. he said, that the Lords of the Council sent a letter to the Court of King's-Bench to bail him. And indeed he produced a letter, which could not by any means be found when the arguments were made at the first conference; and this letter, and a copy of an obscure report made by a young student (which was brought to another purpose, as it hereafter directly), were the only things written of any kind that Mr. Attorney produced, besides the particulars shewed by the House of Commons at the first conference. To this it was replied, That the letter was of no moment, being only a direction to the Chief-Justice, and no manner of Record, nor any way concerning the rest of the Judges; and besides, either the prisoner was bailable by the Law, or not bailable; if bailable by the Law, then he was to be bailed about any such letter; if not bailable by the Law, then plainly the Judges could not have bailed him upon the letter, without breach of their oath, which is, *That they are to do justice according to the Law, without having respect to any person whatsoever*. So that the letter in this case, or the like in any other case, is far point of Law to no purpose, nor hath any weight at all by way of objection against what the Record and the Judgment of the Court there are.

To the 12th and 13th of these, which is *Sir Thomas Marjale's case* in the 14 *Jac. Ret. 147*. the first objection only was made over by him, which was mentioned and clearly answered in the argument; and that one ground which is infallible, *That the judgment upon a return is to be made only out of what appears in the body of the return itself*, was again insisted upon in this case, as it was also in most of the rest. And indeed that alone which is most clear Law, fully finishes almost all kind of objections that have been made to any of their precedents, which, thus rightly understood, as many simple reflections of the Judgment of the Court of King's-Bench, touching in this point, in the several ages, and signs of the several periods under which they fall.

After his objections to the twelve, and the replies and satisfactions given to these objections, he came next to those wherein the assent of the King and Privy-Council appears to have been upon the enlargement; but he made not to any of these any other kind of objections whatsoever, than such as are answered and clearly answered (as they were now again) in the argument made at the first conference. And for so much as concerns letters of assent or direction, the same was here said again by way of reply to him, as is before said touching the letter in *Bushell's case*.

After these were dispatched, he came to urge the eight precedents, which seemed to make for the other side against the resolution of the House of Commons: which eight were used, and copies of them also were given in to the Lords at the first conference.

Of these eight, the first four were urged by him, as being of one kind; the difference of the only being such, that, first only in the names of prisoner and of persons, they are but the following.

To the force of these four he objected thus: that *Richard Eversard* (for the purpose) in the first of them, which is 5 *H. VII. Ret. 13*. *Roger Cherry* in the second of them, which is 8 *H. VII. Ret. 12*. *George Burton*, in the third of them, which is 9 *H. VII. Ret. 14*. and *Christopher Urquhart* in the fourth of them, which is 10 *H. VII. Ret. 23*. were returned into the King's-Bench upon several Writs of *Habeas Corpus*, to have been committed and detained in the several persons whence they came per *mandatum Domini Regis*, and that upon that return they were committed to the Marshal of the King's-Bench; and that however it had been objected against these precedents, that this kind of commitment was by the course of that Court, always done before the bailing of the prisoner, yet that it did not appear that they were bailed.

The Reply to this objection was, That by constant course of King's-Bench, whosoever came in upon *Habeas Corpus*, or otherwise upon any Writ in that Court, cannot be bailed until he be first committed to the Marshal of that Court; and that thence it was, that all these four were committed to the Marshal, as appears by the entry, *Qui commisit Marjale, &c.* which is the usual entry in such a case, and that the Clerks of that Court acknowledge this course and entry to be most convenient. So that all the interest, that can be made out of these four, is that four prisoners being brought from four several prisons by *Habeas Corpus* into the King's-Bench, and returned to stand committed per *mandatum Domini Regis*, were so far from being remanded by the Law, that in all these four cases, they were first taken from the several prisons, wherein they had been detained, by such a general command (which could not have been if they had not been adjudged in every one of the cases to have been bailable by the Court), and that this commitment of them to the Marshal of the King's-Bench, was the first step towards the bailing of them, as in all other cases. But that it appears not, that either they were demanded to be bailed, or that they were able to find sufficient bail; and if they did not the one, or could not do the other, it may follow indeed that they were not bailed. But this commitment to the King's-Bench being the first step to the bailing of them (as by the constant course it is) they are most plainly that they were bailable by the Law, which is the only thing in question. So that also these four precedents were ranked among them, that may seem to make against the resolution of the House of Commons, which was done, both because they have this small colour in them for the other side, to any man that is not

acquainted with the use and seasons of the entries, and entries in the Court of King's-Bench, and also because all or some of them had been used in the late great case in the King's-Bench, as precedents, to make against the entry claimed by the subject; yet, in truth, all of them do so fully prove their resolution, that is, they plainly shew that the Court of King's-Bench in every one of them resolved, that the prisoners so committed were bailable, otherwise they had been remanded; and thus they committed to the Marshal of the King's-Bench. And this was the reason to the objection made by Mr. Attorney upon these four precedents, in all all of the time of King Henry the eighth.

To the fifth of these eight, being *Edward Pender's Case*, in 11 *VIII. Ret. 23*. Mr. Attorney objected thus: *H. VIII. that Edward Pender* was committed to the Marshals of the Household, per *mandatum Domini Regis*, *Habeas Corpus* *replevit*. *Ret. Qui commisit Marjale, &c.* *H. VIII. Marjale* *Replevit*. By which it appears, as he said, that the Court is now to him back to the prison of the Marshals of the Household, and he said, that wherein it had been objected at the first conference, that there was some mistaking in the entry; he conceived, indeed, that there was a mistaking; but it was that the Clerk had entered commitment for *remittitur* and that it should have been *Qui remittitur Marjale* *Replevit* *Domini Regis*, but when he considered they remanded the prisoner, *committitur*, and not *remittitur* should be entered. And that mistaking being in such a manner understood, he conceived it was a direct precedent against the resolution of the House of Commons.

To this it was answered by the Gentlemen of the House of Commons, That there was no doubt, indeed, but that a mistake was in the entry by the Clerk, but that the mistaking was quite of another nature. The addition of those words, *Replevit* *Domini Regis*, was the mistaking, and the entry should have been, *per committitur Marjale, &c.* only; that is, he was committed to the Marshal of the King's-Bench, and it was said, that the force of this precedent should be, but just the same with the first four; but the ignorance of the Clerk that entered it, knowing not how to distinguish between the Marshal of the Household and the Marshal of the King's-Bench, was the cause of the addition of those words, *Replevit* *Domini Regis*.

And to confirm fully, this kind of interpretation of that precedent, and of the mistaking of it, it was offered by the Gentlemen of the House of Commons, that there is in the margin of the Roll an infallible character that justifies to much. For by the course of that Court, who is a prisoner is committed to the Marshal of the King's-Bench and not remanded, the word *Marjale* is written in the margin first by *Mares' man's hand*, and that is never written there, but when the meaning and ends of the entry is, that the prisoner is committed to the prison at the last Court. Now in this case *Mares* in the Margin is likewise written; which most clearly shews that the truth of this case was, that this entry was committed to the Marshal of the King's-Bench, and not remanded, which it would have been, neither could the entry have been *committitur*, nor should the margin of the Roll have had *Mares* written in it.

And thus they have answered Mr. Attorney's objections touching this precedent, and concluded that now, under the fifth foot of the eight, they had answered, and as free to prove, that a prisoner committed per *mandatum Domini Regis*, generally was bailable by the judgment of the Court. However, it appears not in their particulars that they were bailed, which perhaps they were not, either because they prayed it not, or because they could not find sufficient bail.

The fourth of these precedents, being the case of *Thomas Caylor*, in the 8 *Jac. Ret. 149*. Mr. Attorney objected in it thus: That *Caylor* being committed per *mandatum Domini Regis* to the Marshals of the Household, was returned upon *Habeas Corpus* to be so committed, and thence he descended in prison; and that the entry is, *Qui commisit perjane Marjale*, *prodest*, by which it appears clearly, that he was remanded to the last prison from whence he came.

To this the Gentlemen of the House of Commons gave this answer: They said, that the usual entry of a remitter, when it is to show that the Court by way of judgment, or award upon a remission, or debate, remands the prisoner, is, *remittitur quousque secundum legem deliberationis sue* it but when they advise, or give way to the Keeper of the prison to amend his return, or the like, then the entry is only *remittitur* generally, or *remittitur perjane prodest*. But it was indeed affirmed by Mr. Aulack, a Clerk of great experience in that Court, that the entry of a Remitter generally, or *remittitur perjane prodest* was in fact actually used for the time, as *remittitur perjane prodest*. Yet it was expressly shewed by the Gentlemen of the House of Commons, that there was sometimes a difference, and that so it might well be in this case. For in the last of these eight precedents, which is *Saboyall's case*, they object that *remittitur perjane prodest* is often used, and that it is twice used only for a remanding, during the time that the Court gave leave to the Warden of the Fleet to amend his return, which shews plainly, that the *remittitur* *perjane* generally, and *remittitur perjane prodest*, may mean the same, yet sometimes it doth not. And that in this case of *Caylor* it doth not mean any other, but only so much as it doth twice in that of *Saboyall's case*, was proved also by rule of the Court, which was citation of the rule-book of the Court of King's-Bench, by which rule the Court expressly declared, that unless the Sheriff and Marshal of the Household be sufficiently return in the Writ of *Habeas Corpus* for *Caylor*, that he should be discharged. The words of the rule are, *Nisi per seculum* *Sequestrum* *et* *Alia* *quodlibet* *Expositum* *Domini Regis* *sequestrum* *revertendum* *ad* *verba* *de* *Habeas* *Corpus*, *Tha* *Cajus* *de* *Admittitur* *perjane* *prodest* *quousque* *Secundum* *Legem* *deliberationis* *sue* *perjane* *prodest* *quousque* *Secundum* *Legem* *deliberationis* *sue*. And this was the opinion of the Court, which shews that the Court was so far from remanding him upon the return, that they refused it, that unless some better return were made, the prisoner should be discharged of his first imprisonment, though it appeared to them out of the body of the return (upon which they were only to judge), that he was committed per *mandatum Domini Regis* only. And the rule not only shews the opinion of the Court then to have been agreeable to the resolution of the House of Commons, but also that that *Remittitur* generally, or *Remittitur perjane prodest*, doth not always imply a remanding upon judgment or debate. And this answer was given to this of *Caylor's case*, that is the sixth of this number.

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that without any disparagement to them) such opinions as they may well, and ought to charge upon further inquiry, examination, and full debate, had before them, and mature deliberation taken by them. Now plainly in that of 13 *Yes*, there is not so much as a pretence of any debate at the Bar or Bench. All that is reported to have been, is reported as spoken of the fudden. And can any man take such a sudden opinion to be of value against solemn debates and mature deliberations since had of the point? And indeed this great point, and all circumstances belonging to it, have within this half year, been fully examined and searched into, that it may well be affirmed, that the most learned men whatever that hath now considered it, hath within that time, or might have, learned more reason of satisfaction in it, than ever before he met with. Therefore the sudden opinion of the Judges to the contrary is of no value here, which also is to be said of that opinion absolutely delivered in the Common House in 18 *Yes*, as Mr. Attorney objected out of the Journal of the House. But besides, neither was the truth of that report of that opinion in the Journal any way acknowledged; for it was said on behalf of the House of Commons, that their Journals were for matters of Orders and Resolutions of the House of such authority, as that they were at their Records. But for any particular man's opinion, need in any of them, it was far from being of any authority with them, that in truth no particular opinion is at all to be entered in them, and that their Clerk offends, whenever he doth to the contrary. And so conclude, no such opinion whatsoever can be sufficient to weaken the clear Law comprehended in their Resolutions of the House of Commons, grounded upon so many Acts of Parliament, so much Reason of the Common Law, and so many Precedents of Record, and the Resolutions of all the Judges of England; and against which not one Law, written or unwritten, one Precedent, nor one Reason hath been brought, that makes any thing to the contrary.

And thus ended the next day of the Conference desired by the Lords, and had by a Committee of both Houses.

Serjeant Ashley's Argument, forwarding Mr. Attorney, in the behalf of his Majesty.

I Hope it will be neither offensive nor tedious to your Lordships, if I said somewhat to second Mr. Attorney: which I rather desire, because yesterday it was taken by the Gentlemen, and argued on the behalf of the Commons, that the cause was as good as gained by them, and yielded by us, in that we acknowledged the Statute of *Magna Charta*; and against which not one Law, written or unwritten, one Precedent, nor one Reason hath been brought, that makes any thing to the contrary.

That therefore no man could be committed, or imprisoned, but by due process, judgement or indictment.

Which we say is a *Negatius* upon such our acknowledgment, for then we would follow by necessary consequence, that no imprisonment could be justified but by process of law, which we utterly deny. For in the case of the Confiscable cited by Mr. Attorney, it is well clear, that by the ancient law of the land a Constable might, *ex officio*, without any Warrant, arrest and detain a man to prevent an affray, or to suppress it. And so is the authority 38 *Hon. VII. Brant's* alleged. So may be, after the affray, arrest and commit to prison the person that hath wounded a man that is in peril of death, and that without warrant or process; as it is in 38 *Edw. III. fol. 6.*

Also any man that is no Officer may apprehend a Felon without Writ, or Warrant, or pursue him as a Wolf, and as a common enemy to the Commonwealth, as the Book is 14 *Hon. VIII. fol. 16.* So might any one arrest a Night-walker, because it is for the common profit, as the reason is given 4 *Hon. VII. fol. 7.*

In like manner the Judges in their several Courts may commit a man, either for contempt, or misdemeanor, without either Process or Warrant, other than Take him Sheriff, or Take him Marshal, or Warden of the Fleet. And the adversaries will not deny, but if the King will alledge cause, he may commit a man *per mandatum* as the Judges do, without Process or Warrant.

And various are the cases that may be intimated, wherein there may be a lawful commitment without process. Wherefore I do positively and with confidence affirm, that if the imprisonment be lawful, whether it be by process, or without process, it is not prohibited by the law.

Which being granted, then the question will apply be made, Whether the King or Council may commit to prison *per legem terræ*, were only that a part of the Municipal Law of this Realm, which we call the Common Law? For there are also divers jurisdictions in this Kingdom, which are also reckoned the law of the land.

As in *Cowley's* case in *Cal's* 6th report, fol. 1. the first *Enrolment* Law is held the law of the land, to punish Blasphemers, Schismatics, Heretics, Simony, Infanticide, and other sins, for a good reason there rendered, viz. That otherwise the law should be so diverse, that Justice to his Subjects in all cases, not to punish all crimes within his Kingdom.

The Admirals jurisdiction is also *lex terre*, or things done upon the Sea: but if they exceed their jurisdiction, a prohibition is awarded upon the Statute of *solus Nave* here, by which appears that the Statute is in force, as we have acknowledged.

The Martial Law likewise, though not to be exercised in times of peace, when recourse may be had to the King's Courts, yet in times of warlike, or other times of Hostility, when an Army-Regiment in the field, and offences are committed, which require speedy redress, and cannot expect the solemnity of legal Trials; then such imprisonment, execution, or other Justice done by the Law Martial is warrantable, for it is then the law of the land, and *ex potestate*, which ever serves for a supply in the defect of the Common Law, where ordinary proceeding cannot be had.

And so it is also in the case of the Law of the Merchant, which is mentioned 13 *Edw. IV. fol. 49.* where a Merchant-Stranger was wronged as his goods, which he had committed to a Carrier to convey to *Santampnia*, and the Carrier imbezelled some of the goods: for remedy whereof the Merchant sued before the Council in the *Star-Chamber* for redress. It is there said thus. Merchant-Strangers have by the King full authority for coming into this Realm; therefore they shall not be compelled to attend the ordinary Trial of the Common Law, but, for expedition, shall sue before the King's Council, or in Chancery, *de iure in iudicio* &c.

hæret in iure, where the case shall be determined by the Law of Merchants.

In the like manner it is in the Law of State; when the necessity of State requires it, they do and may proceed to natural equity; as in those other cases where the law of the land provides not, there the proceeding may be by the law of natural equity: and infinite are the occurrences of State, unto which the Common Law extends not. And if these proceedings of State should not also be executed the law of the land, then we do fall into the same inconvenience mentioned in *Cowley's* case, that the King should not be able to do Justice in all cases within his own Dominion.

If then the King nor his Council may not commit, it must needs follow, that either the King must have no Council of State, or having such a Council, they must have no power to make Orders, or Acts of State; or if they may, they must be without means to compel obedience to those Acts; and so we shall allow their jurisdiction, but not compel obedience to those Acts, but not correction, which will be then as fruitless as the command. *Præter potentia sine imperio imperator in statu.* Whereas the very Act of *Witchamper* the fifth, shews plainly that the King may commit, and that his commitment is lawful, or else that Act would never have declared a man to be arraignable when he is committed by the command of the King, if the Law-makers had conceived that his commitment had been unlawful. And Divine Truth intreats us, that the Kings have their power from God, the *Psalist* calling them *the Children of the Most High*, which is in a more special manner understood than of other men: for the form of Adam are by election the sons of God, and all the sons of Abraham by recreation, or regeneration, the children of the Most High. In respect of the power which is committed unto them, who hath also furnished them with ornaments and arms fit for the exercising of that power, and hath given them scepters, Swords, and Crowns; scepters to institute, and swords to execute laws; and Crowns an Emblem of that power and dignity, with which they are invested. Shall we then conceive that our King hath so far transferred the power of his Sword to inferior Magistrates, that he hath not reserved so much supreme power as to commit an offender to prison? 10 *Hon. VI. fol. 7.* it appears that a Steward of a Court-Lect may commit a man to prison, and shall not the King, from whom all inferior power is deduced, have power to commit? We call him the Fountain of Justice, yet when these streams and rivulets, which flow from that fountain, congregate and fall, we would be so foolish that sometimes, as to leave it dry. But they that will admit him so much power, do require the execution of the cause; I demand whether they will have a general cause assigned, or a special? If general, as they have instances for Treason, Felony, or for Contempt, (so to leave fencing, and to speak plainly as they intend it) was. If Loss of money should be required and relaid, and thereupon a commitment ensue, and the cause signified to be for Contempt, this being unequal inconvenience from yielding, the remedy is sought; in the next Parliament would be required the expiation of the particular cause of the commitment. Then how unfit would it be for King or Council in cases to express the particular cause, it's easily to be adjudged, when there is no State, or Policy of Government, whether it be Monarchical, or of any other frame, which have not known Secrets of State, not communicable to vulgar understandings.

I will instance but one; if a King employ an Ambassador in a Foreign Country or State, with instructions for his Negotiations, and he pursue on his instructions, whereby offence and damage may ensue to the Kingdom, is not this communicable?

And yet the particular of his instructions, and the manner of his misbehaving, is not fit to be declared to his Keeper, or by him to be certified to the Judges, where it is to be opened and debated in the presence of a great audience.

I therefore conclude, for offences against the State, in case of State Government, the King and his Council have lawful power to punish by imprisonment, without shewing particular cause, when it may tend to the diffusing of State Government. It is well known to many that know me, how much I have laboured in this law of the subjects liberty very many years before I was in the King's Service, and had no cause then to speak, but to speak *ex animo*; yet I did then maintain and publish the same opinion which now I have declared concerning the King's supreme power in matters of State, and therefore cannot justly be censured to speak at this present only to merit my Master. But if I may freely speak my own understanding, I conceive it to be a question too high to be determined by any legal direction; for it must needs be an hard case of contention, when the Conqueror must fall down with irreparable loss, as in this case. If the Subject prevails, he gains liberty, but loseth the benefit of that State Government, by which a Monarchy may soon become an Anarchy; or if the State prevails, it gains absolute Sovereignty, but loseth Subjects: not then subjection, for obedience we must yield, the nothing be left to us, but yet retain our minds, but yet submit the best part of them, which is their affections, whereby Sovereignty is established, and the crown itself, fix on his royal head. Between two such extremes there is no way to moderate, but to find a medium for the accommodation of the difference; which is not for me to prescribe, but only to move your Lordships, to whom I submit.

After Mr. Serjeant's speech ended, my Lord-President said that to the Gentlemen of the House of Commons. That though at this free conference, liberty was given by the Lords to the King's Council to speak what they thought fit for his Majesty, yet Mr. Serjeant Ashley did so authoritatively, or *directum* from above in such manner he had done. And he was committed into custody, and afterwards, being sorry for any hasty expression he might have used, was discharged.

The Objections of the King's Council, with the answers made thereto, at the two Conferences touching the same matter.

IT was agreed by the Attorney-General, Sir Robert Heath, that the seven Statutes urged by the Commons were in force, and that *Magna Charta* did extend most properly to the King. But he said, 1. That some of them are in general words, and therefore conclude nothing, but as to be expounded by the precedents; and other that be more particular, are applied to the suggestions of subjects, and not to the King's command simply of itself. Hereunto it was answered, That the Statutes were as direct as could be, which apperly by the reading of them, and that though some of them speak

Which generally before by the Parliament was otherwise conceived; for now they say, it was but an award and no judgment, will such a notorious Act upon so important an occasion as to publish a peace be quickly forgotten? No, will not the memory of it for ever remain upon records? Is not our case then much better than when we came hither?

And I, Will not the resolution of this House, and all our arguments and reasons against imprisonment without a writ, be (which no doubt by the course we have taken will be translated in policy) be a great reason to lay the Judge's resolution from declaring any judgment to the contrary, especially of those be likelihood of a Parliament? Is not our case in this very much amended?

Lastly, Have we not received Propositions from the Lords, wherein (amongst other things) they declared, that they were not of force with our proceedings? Is not this a great strengthening to us? But after all long debate amongst them about it, they cannot take any full exception to it; and such not this also much amend our case?

From all these reasons, I conclude that the second objection, that by a continuance we are in a better case than when we came together, is also a weak objection.

Now forasmuch as we are to proceed in the course of accepting a confirmation: First, We have his Majesty's gracious Promise to yield to a confirmation of the old Laws, from which we may well infer he offered he will not dispute, if we tender him, without our Proposition to be enacted, we have cause to doubt that we shall lose both the one and the other.

Secondly, We are so left assisted of the Lords joining with us, for in their Propositions first to us they have delivered themselves to that purpose: then a tacit assent of giving force to that of great advantage to us, as we have great hopes, and in a manner assurance on this side, so on the other side we have great doubts and fears, that by offering our resolution to be resolved, we shall lose all.

For first we have had already experience of the Lords, that they are not very forward to join with us in a declaration of our Position to be Law, if they stand in a declaration, much more will they, in yielding to make a Law in the same point.

And have we not much more cause to doubt that his Majesty will not yield unto it, seeing it toucheth him so near? Is it not the essence of his pleasure that which wrought thus with the Lords?

If we should carry our Bill with one Proposition, and it should be rejected by the Lords, or by the King, is not our resolution much weakened by it; and are we not then in far worse case than before we made it? Our resolution for the rejecting of our Proposition, will tend to a justification of all that hath been done against us in this great point of our Liberty.

Let us also, the next way, inform our desire to our hopes, and guide our steps by probabilities, rather than by our desires and our wishes.

This is my poor opinion in this weighty business.

And to the day following they had further debate upon that matter, the House being turned into a Grand Committee, and Mr. Herbert in the chair.

Some said that the subject had suffered more in the violation of ancient Liberties within these few years, than in three hundred years before, and therefore care ought to be taken for the time to come.

Sir Edward Coke said, That that Royal Word had reference to some message formerly sent by his Majesty's word was, that they may sever themselves any way, by Bill or otherwise, be granted to give way to us. And in the end that this might not touch his Majesty's honour, it was proposed, that the Bill come not from the House, but from the King: We will and grant for our and our successors, and that we and our successors will do thus and thus; and it is the King's honour, he cannot speak but by Record.

Others desired the House to consider, when and where the late promise was made; was it not in the face of both Houses? And Kings have been careful to perform their promises, yet, though they have been unlawful, as *Herald*. Therefore if we rest upon his Majesty's promise, we may as well ourselves of the performance of it; besides, we bind his Majesty, by relying on his word: we have laws given, it is the execution of them that is our life, and it is the King that gives life and execution.

Sir Thomas Watson concluded the debate, saying, That now House of Parliament traffick more in the pockets of their King. For their own private accounts, than the people; but we are ambitious that his Majesty's pockets may remain to posterity, and we are accountable to a publick trust: and therefore fearing there hath been a publick violation of the laws by his Ministers, nothing will satisfy him but a publick amendment; and our desire to vindicate the subjects right by Bill, be no more than are had done in former Laws, which were made provision for infraction, performance and execution.

Which was well agreed with the House, that they made it the subject of a message to be delivered by the Speaker to his Majesty.

Amidst these deliberations, another message was delivered May 3, from his Majesty by Mr. Secretary Cook, That his Majesty was pleased in this business we have in hand, which his Majesty will not doubt, but to be according to our confident profession, and so as he may have cause to give what he will; yet his resolution is, that both his royal care, and liberty and tenderness towards all his loving subjects, shall appear to the whole Kingdom, and all the World, that he will govern us according to the laws and customs of this Realm; that he will maintain us in the liberties of our persons, and properties of our goods, so far as we may enjoy as much liberty as our forefathers in their best times; and that he will multiply what hath been, or may be found ancient amongst us, so that hereafter there may be no just cause to complain. Whereas his Majesty will be much obliged of strength the better of our Kings, and those he hath no occasion to touch or invade our lawful liberties, as right, so he will have us in such civility with the best subjects, not by increasing upon their ancient and prerogative, which God hath put into his hands; nor our power, but by containing ourselves within the bounds and laws of our forefathers, whose resolutions, or enlarging them by new explanations, interpretations, opinions, or additions in any sort; which, he hath said, he will not give way unto.

That the weight of the affairs of the Kingdom, and Christendom, doth grow more and more, and that the time is now grown to that point.

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of maturity, that it cannot endure long debate or delay; so that this Session of Parliament must continue no longer than 7 May (next-eight at farthest); in which time his Majesty, for his part, will be ready to perform what he promised, and if the House be not ready to do that is fit for themselves, it shall be their own fault.

And upon assurance of our good dispatch and correspondence, his Majesty declared, that his royal intention is to have another Session of Parliament at *Michmas* next, for the perceiving of such things as cannot now be done.

This message was debated the next day, being Saturday, May 3, whereupon Sir John Elliot spoke to this effect:

The King, I am sure, will rank himself with the best of Kings, and therefore he would have us rank our men with the best subjects; we will not incommence upon the King's subjects, but we will stand by his side; this makes me fear his Majesty is not contented as what we gathered; let us make force enlargement, and put it before him, that we will not make any thing new. As for the time of this Session, it is but short; and look how many resolutions we have, it is many more, and we do not expect, and not from conclusions to be made, but to be made.

Sir Ald. A. F. of counsel said, that the King's Majesty, that his Majesty is of great importance, we are to be a moderate time, the best of this Parliament will be the greatest such, that our bill is, the King of Christendom are upon this Parliament, the King of all our Protestant Friends are ready to be followed up by the Emperor's Forces, and our own Kingdom is in a most perilous point, for the danger of our Religion that is invaded by the Roman Catholics, by the colour of a commission, which is intolerable; the danger of our Realm by blipping is decayed, the King's revenue is sick and poor, when his Majesty's revenue is obtained by the Parliament. Now we are in the way, let us proceed by way of Bill, in pursuance of the King's will, as well as the fundamental Laws in pursuance of our oaths, and liberty of our persons: It was declared to us, that among by Law and by judgment were not lawful, let us touch them in our Bill, and that all persons and judgments leaving to the contrary, be void; and that all enactments against the Law be removed, and that we be provided against the fear of continuance.

Mr. MASON spoke.

I AM of opinion with the Gentlemen that speak, that, in our proceedings in the matter now in debate, we should have use of the title of the Statute, called *de officio* again; for it concerns the liberty of our persons, without which we are not to enjoy our lives.

The SPEAKER.

Whether in this Bill for the explanation of *Magna Charta*, and the rest of the Statutes, we shall provide that the words of the commitment shall be expensed upon the commitment, or upon return of the *Habeas Corpus*?

Before I speak to the question itself, I shall propose some observations, in my conceits, especially conducing to the debate of the matter.

1. That we ought to take care, and to provide for potency, as our predecessors have done for us, and that this provide care cannot be expounded to be any detriment of the prerogative of his Majesty's gracious declaration, this Act providing for prerogative, to which his Majesty's power, unless it were by Act of Parliament, cannot extend.

2. That we having solemnly and solemnly renewed our rights and privileges by virtue of this Act, as if now we shall renew these declarations, and these resolutions, as an Act, we shall ever be careful to be confined within the bounds of what an Act, being made in our own, and to be the basis of the Perpetuity in that respect, and it being an Act of explanation, which shall receive no further explanation than itself contain.

3. That by this Act we shall provide a remedy against the persons which detain us in prison, for as to the commitment, there can be no certainty.

Concerning the *Question* itself.

It hath been solemnly and clearly resolved by the House, that the commitment of a Freeman, with out expending the cause at the time of the commitment, is against the Law: If by this Act of explanation we shall provide only that the cause ought to be expensed upon the return of the *Habeas Corpus*, then out of the words of the Statute, it will necessarily be inferred, that before the return of the *Habeas Corpus* the cause need not so be expensed, because the Statute hath appointed the time of the expensation of the cause, and it will be allowed, that if the makers of the Statute had intended that it should be so, it would have been from them, they would have provided for it by the Act; and then the Act, which we term an Act of explanation, will be an Act of the changing of *Magna Charta*, and the rest of the Statutes, so if this Act do make the commitment without expending at the time, to be lawful, yet it will clearly amount to a violation of the commitment, without expending the cause, and the *Habeas Corpus*, or to a general or perpetual dispensation, beginning with, and continuing as the Law in it. And as my understanding the words in this Statute of Law, that no Freeman can be committed, without our cause expensed, as I saw that Statute can be construed, with the nature of the *Habeas Corpus*, be that commits a Judge of the cause, or at least hath a licence by this Law will that none to exceed the cause, and the Gaoler is not subject to any action for the detaining of the Prisoner upon such command. For if the prisoner demand the cause of his imprisonment of the Gaoler, it will be a sufficient answer for him to say that he detain a prisoner by warrant, and that it belongs not unto him to deliver those which commit the prisoner to their cause until he return the *Habeas Corpus*. And if the prisoner be a Stranger to know the cause from those that committed him, it will be a sufficient answer for them to say, they will repeat the cause at the return of the *Habeas Corpus*. In this case there will be a wrong, because the commitment is without cause expensed, as I saw that Statute that wrong, yet the party imprisoned, and yet no such wrong done but may excuse, if not justify himself by this Law.

In making of Laws, we must consider the inconveniences which may ensue, and provide for the prevention of them, as we can do for them. I have taken into my thoughts these inconveniences which shall expose to your consideration, not imagining that they can happen in the time of our gracious Sovereign, but in an Act of Parliament, we must provide for the prevention of all inconveniences in future times.

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directed to the House of Commons, and the Petition of Right would close all difficulties: For (said he) from give it out, as if the House went about to touch the King's Privilege. But the farther debate of this matter took up several days.

May 27. The Lords proposed, at a conference, an addition to be made to the Petition of Right, which was delivered by the Lord-Keeper, to this purpose:

YOU the Knights, Citizens, and Burgeſſes of the House of Commons, my Lords have commanded me to present unto you the singular care and affection they have to preserve that unanimity and order, which the two Houses, both in this and former Parliaments, to the happiness of this Kingdom, have heretofore enjoyed.

This command is also to you know, that they have no less care and affection to bring that great business, the Liberty of the Subject, to an happy issue. And whereas, at the last conference of both Houses, there were some things proposed, that came from their Lordships, out of a desire the Petition might have the easier passage with his Majesty, not intending to alter in any manner the substance of the Petition, but it was then thought fit, that there was another part of the Petition, of an great importance and weight. My Lords, since the time of that conference, have employed themselves wholly to reduce the Petition to such a frame and order, that may give both to you and them hope of acceptance.

And after many deliberations, and much advice taken, my Lords have resolved to represent to you something which they have thought upon, yet not as a thing conclusive to them or you; and according to their desire (having mentioned it in the beginning) have held it fit to conclude of nothing, till that you be made acquainted with it, and that there may be a more intimate agreement between you and them, in that there may be the happy conclusion in all their business.

Thus being the determination of the Lords, that nothing, that is now offered unto you, should be conclusive, yet they thought it convenient to present it unto you.

This alteration (not alteration, but addition) which they shall propose unto you, to be advised and conferred upon, which is no breach of the same, they think it meet, if it shall stand with your liking, to be put in the conclusion of the Petition which I shall now read unto you.

We present this our humble Petition to your Majesty, with the care not only of preserving our own Liberties, but with due regard to those rights that Sovereign Power, whereunto your Majesty is trusted for the Protection, Safety, and Happiness of the People.

This is the thing the Lords do present unto you, the Subject of this conference, concerning the adding of this in the conclusion of the Petition; and as an answer, that this is no fault finding, and that you cannot possibly give an inkrow to it; therefore they desire you, that you do with some speed consider of it, and their Lordships will be ready this afternoon.

This addition produced several speeches.

Mr. Ayres.] Let us look [said he] into the Records, and see what they say, what is Sovereign Power? And faith, That it is free from any condition, by this we shall acknowledge a Royal, as well as a Legal Power: Let us give that to the King, that the Law gives him, and no more.

Mr. Pym.] I am not able to speak to this question, I know not what it is: All on Petition is for the Laws of England, and this power seems to be another distinct power from the power of the Law. I know how to add Sovereignty to his Person, but not to his Power: And we cannot leave to him a Sovereign Power, when we never were possessed of it.

Mr. Hachwell.] We cannot admit of those words with safety, they are applicable to all the power of our Petition: It is in the nature of a Saving, and by it we shall imply, as if we had incroached on his Privilege; all the Laws we cut are without a Saving; and yet now after the violation of them we must add a Saving: I have seen diverse Petitions, and where the Subject claimed a Right, there I never saw a Saving of this nature.

Sir Edward Coke.] This is against in parvo, this is proposed to be a conclusion of our Petition: It is a matter of great weight; and, so speak plainly, it will overthrow all our Petition; it reaches to all parts of it: It lies at Leans, and at the Oath, and at Imprisonment, and Solliciting of Soldiers; this runs all about again. Look into all the Petitions of former times, they never petitioned, whereas there was a favour of the King's sovereignty. I know that Petitioners in part of the Law, but foreign Power is no Parliamentary word. In my opinion, it weakens *Magna Charta*, and all our Statutes; for they are absolute, without any saving of sovereign Power. And shall we now add it, we shall weaken the foundation of Law, and then the building must needs fall; let us take heed what we yield unto: *Magna Charta* is such a fellow, that he will have no foreword. I wonder this sovereignty was not in *Magna Charta*, or in the confirmations of it: If we grant this, by implication we give a sovereign power above all the Laws: power in Law, is taken for a power with force: The Sheriff shall take the power of the County, what it means here, God only knows. It is a repugnance to our petition, that is a *Protest of Rights*, grounded on Acts of Parliament. Our Petitioners could never desire a *save* from any, so none but the King of old could endure for the Clerk, *save* before the Duke of Exeter. We shall not admit of it, and to qualify it, is impossible. Let us hold our privileges according to the Law, that power, that is above this, is not fit for the King and People here as it is disputed further. I had rather, for my part, have the prerogative abated, and I myself to be under it, than to have it disputed.

Sir Thomas Wentworth.] If we do admit of this addition, we shall leave our Subject worse than we found him, and we shall have little thanks for our labour, when we come home: Let us leave all power to his Majesty to punish malefactors; but our Laws are not acquainted with sovereign power. We desire no new thing, nor do we offer to touch on his Majesty's prerogative; we must not recede from this position, either in part or whole.

Mr. Nye.] To add a Saving, is not idle, doubtful words, but brings all confusion: and the words are not only unusual words, but words unknown to any, and never used in any act or Petition but in.

Mr. Selous.] Let us not go too hastily to the question. If there be any objections, let any proposed them, and let us then answer them as they think good. I will not touch the matter already said. The fact of this addition is, that our right is not to be fully 2 in Loans or imprisonment without cause, or martial law, but by foreign power. If it hath no reference to our Petition, what death is here? I am not all others will say it hath reference, and so must we. How far it hath exceed all examples of former times, no man can draw me the line. I have made sure that this is a full satisfaction, and I find not another kind: 23 Ed. I. We have given many petitions and bills of parliament in all ages, in all which we are full on such thing is added. That clause of the 28 Ed. I. it was not in the petition, but in the King's answer.

In *Magna Charta* there were no such clauses; the articles themselves are to be seen in a library at Lambeth, in a book of that time, upon which the law was made. There was none in the statutes in King John's time, for there I have seen, there is no saving. In the articles of agreement, *charter*, is a saving, to ensure only, that is, for fear of law, *for fear of the sword*, and for reason. And in the articles of King John, in the original charter, which I can show, there those three words were added therein, and they were all known. In the 25 Ed. III. there is a petition against Loans, there it is a saving, and so in others. As for that addition in the 28 Ed. I. do not observe the petition after *Magna Charta*; as 3 Ed. III. they put up a petition: a heres in *Magna Charta* it is contained, it is so in *Magna Charta*, and by the growth of law; those words are not in *Magna Charta*, and yet there is no saving. And so in the 28 Ed. III. and 30, 31, and 32, and 33 Ed. III. all which parts by petition, and yet there is no let by in them. And there are no more other words that are not in *Magna Charta*, and yet no saving. For that that Mr. Speaker said to the King, it was our heart, and ever shall be, but we then spoke of the King's prerogative by itself, and we are bound to say so; but speaking of our rights, shall we say we are not to be imprisoned, saving but by the King's Sovereign power? say my Lords, without any title, be added in the King's hand, and I bring a petition of right, and I go to the King, and say, I do by no means lose your Majesty's right and title; and after that, I bring a petition of *supplicavit de dictis*, setting forth my own right and title, and withal set down a saving, that I leave infinite his Majesty's right, it would be improper. It was objected, that in the 28 of Ed. I. in the end of another *Magna Charta*, which was a confirmation of *Magna Charta*, and *Charta de Foresta*, in the end thereof is a clause, *in testis* I fear every, the words are extant in that roll that is now extant, but the original roll is not extant.

In the 25 Ed. I. there was a confirmation of the Charter; In the 27 Ed. I. the Parliament was called, and much for there was about the Charter, and renewing the Articles, but then little was done. In 28 Ed. I. the Commons by petition or bill, did obtain the liberties and articles at the end of the Parliament; they were extracted out of the roll, and proclaimed abroad. The addition was added in the proclamation: In the bill there was no saving, but afterwards it was put in, and to prove that, it is true, there is no Parliament-roll of that year, yet we have histories of that time. In the library at Oxford, there is a journal of a parliament of that very year, which contains so much; also in the public library at Groby, there is a manuscript that belonged to an Abbot, it was of the time year 28 Ed. I. and it contains the petitions and the petitioners, and *actum per petitionem de imprisonment* run at in four folios, *sub pre* on one regard; and they came by proclamation in London. When the people heard that clause added in the end, they fell into execration for that addition, and the great Earls that went away satisfied from the Parliament, hearing of this, went to the King, and afterwards it was cleared at the next Parliament. Now there is no Parliament-roll of this at that time, only in one roll in the end of Ed. III. there is a roll, that recites the Parliament bill, but the Statute that was the effect of the roll, that was proclaimed.

The Lords afterwards, at a conference, rendered reasons to justify their additions; which were briefly repeated by the Lord Keeper:

THAT the Lords were all agreed to defend and maintain the just liberties of the Subject, and of the Crown; and that the word, *save*, was debated amongst them; and thereby they meant to give no new, but what was before: For the words, *Sovereign Power*, as he a King, he is a Sovereign, and must have power; and he said, the words were clear that the *Prærogative*. As for the word, that which is relative, and referred to that power, that is for the safety of the people; and this, said he, can never give any man. Being that published, it is not so well understood in general, but now in consultation of our reasons, *Magna Charta* was with a saving; but, said he, you parse not the words in *Magna Charta*, and therefore it needs an addition.

As for the 28 of Ed. III. he said, there was a saving; and an all exception cannot be made of this, and both Houses have agreed it in substance already; the Command did in a speech delivered by the Speaker, and that we say we have not a thought to touch on the King's sovereignty; and why may you not add it in your petition?

Upon this report, Mr. Mayes spake his opinion in manner following:

IN our Petition of Right to the King's Majesty, we mention the laws and statutes, by which it appears, That no man, man, or the like, ought to be bound by the King, but by common assent of Parliament; that no man ought to be imprisoned but by the law of the land; that no freeman ought to be compelled to suffer soldiers in his house. In the petition we have expounded the breach of their laws, and so we may not suffer like, all which we pray as our rights and liberties.

The Lords have proposed an addition to this Petition, in these words:

We humbly present this Petition to your Majesty, not only with a care of preserving our own Liberties, but with a due regard to those rights that Sovereign Power, whereunto your Majesty is trusted for the Protection, Safety, and Happiness of the People.

wherein his Majesty is interested for the protection, safety, and happiness of his people.

And whether we shall consent unto this addition, is the subject of this day's discourse; and because my Lord-Keeper, at the last conference, declared that Lordships had taken the words of the petition apart, I shall do so too. The word, *here*, in a petition, is of the same nature as *feeling* in a grant, or *aid* of parliament; when a man grants but part of a thing he feels the rest; when he petitions to be relieved but partly, he leaves the rest; then in the end of our petition, the word, *here*, will imply, that something is to be left of that, or at least with a reference to what we desire.

The word, *here*, is very considerable; a Conqueror is bound by an Law, but hath power *de re leges*, his Will is a Law; and although I dissent the Conqueror, at first, to make his way to the Crown of England the more easy, and the petition of it more free, claimed it by title, but afterwards when there were no powerful pretenders to the Crown, the rule of conquest (to introduce that absolute power of a Conqueror) was claimed, and that Statute of *Magna Charta*, and other Statutes mentioned in our petition, do principally limit that power. I hope it is as lawful for me to cite a *Joan*, as it is for Dr. *Moderatus* to falsify him; *Joan*, in his first book, *de Legibus*, cap. 17. delivered his opinion in these words, *Absolutio et tyrannica potestas Regum non est quæ per se male vel impie non fiat, sed et ex arbitrio hominum et ex antiqua consuetudine vel jure inter Reges et Regnum*. And he further expresseth his opinion, That the King of Spain was to be absolute a Monarch, that he might lawfully impose tribute without consent of his people, and about two hundred years since, when it was concluded between him and his people, that without consent of his people by proxy, he should not impose any tribute. And *Savero's* opinion is, That by that agreement, the Kings of Spain are bound to impose no tribute without consent.

And this agreement that author calls a restraining of that *foreign power*; the Statutes then mentioned in our Petition, restraining that absolute power of a Conqueror; if we receive those Statutes, and say, we leave the *foreign power* intact, we do take away that restraint which is the safety and strength of those Statutes, and let at liberty the claim of the *foreign power* of a Conqueror, which is to be limited and restrained no less: thus may be the danger of the word, *here*.

The next word followed by the Lords as observable, is the particle, *That*; because it was said, that all *foreign power* is not mentioned to be left, but only (that) with which the King is troubled for our protection, safety, and happiness. But I conceive this to be an exception of all *foreign power*, for all *foreign power* is in a King, for the protection, safety, and happiness of his people. If all *foreign power* be excepted, you may easily judge the consequence, all Loans and Taxes being imposed by colour of that *foreign power*.

The next word is, *Trusted*, which is very ambiguous, whether it be granted, trusted by God only as a Conqueror, or by the people also, as King, which are to govern also according to laws, *ex jure*. In this point I will not presume to advance farther; only I like it not, by reason of the doubtful exposition it admits. I have likewise considered the proposition itself, and therein I have fallen upon the dilemma, that this addition shall be confirmed either to refer unto the petition, or not; if it doth refer unto the petition, it is merely useless and unnecessary, and unbefitting the judgement of this House and great assembly to add to a petition of this weight. If it hath reference unto it, then it doth not only the *virtus* and strength of our petition of Right, but our Rights themselves, for the addition being referred to each part of the petition, will necessarily receive this conclusion; That none ought to be compelled to make any Gift, Loan, or such like charge, without common consent, or Act of Parliament, unless it be by the *foreign power*, with which the King is troubled for the protection, safety, and happiness of his people.

That none ought to be compelled to borrow or borrow soldiers, unless by the same *foreign power*; and so of the rest of the Rights contained in the petition; and then the most favourable construction will be, that the King hath an ordinary prerogative, and by that he cannot impose Taxes, or impositions; that is, he cannot impose Taxes at his Will to employ them as he pleaseth; but that he hath an extraordinary and transcendent *foreign power* for the protection and happiness of his people, and for such purpose he may impose Taxes, or borrow soldiers as he pleaseth; and we may assure ourselves, that besides all Loans, Taxes, and borrowing of soldiers, will be laid to be for the protection, safety, and happiness of the people. Certainly hereafter it will be conceived, that an House of Parliament would not have made an unnecessary addition to this Petition of Right; and therefore it will be relieved, That the addition hath relation to the Petition, which will have such operation as I have formerly declared; and I the rather fear it, because the late Loan and Borrowing have been declared to have been by *foreign power* for the good of ourselves; and if it be doubtful whether this proposition hath relation to the petition or not, I know not who shall judge whether Loans or Impositions hereafter be by that *foreign power* or not?

A Parliament, which is made a Body of several Wills, may be dissolved by our Commission, cannot be certain to decide this question. We cannot relieve that the Judges shall determine the words of the King's Letter read in the House, expressing the cause of commitment may be such, that the Judges have not capacity of judgement, no Rules of Law to direct and guide their judgments in cases of that transcendent nature the Judges then, and the judgement, are easily conjectured. It hath been confessed by the King's Council, that the Statute of *Magna Charta* binds the King, and his *foreign power* cannot be divided from himself. If then the Statute of *Magna Charta* binds the King, it binds his *foreign power*. If to the petition these words be added, the exposition must be, that the Statute of *Magna Charta* binds the King's *foreign power*; saving the King's *foreign power*, I shall endeavour to give some answer to the reasons given by the Lords.

The first is, That it is the intention of both Houses, to maintain the full liberty of the Subject, and not to diminish the just power of the King, and therefore the expression of that intention in this petition, cannot prejudice us. To which I answer,

First, That our intention was, and is, as we then protested, and now

man can assign any particular in which we have done to the contrary; neither have we any way transgressed in that kind in this petition; and if we make this addition to the petition, it would give some satisfaction, that we have given cause or colour of offence therein; which we deny; and which if any man conceive so, let him assign the particulars, that we may give answer thereto.

By our petition, we only desire our particular Rights and Liberties to be confirmed to us, and therefore it is not proper for us in it to mention *foreign power* in general, being altogether impertinent to the matter of the petition.

There is a great difference between the words of the addition, and the words proposed therein, viz. between just Power, which may be conceived to be limited by Laws, and *foreign Power*, which is supposed to be transcendent and boundless.

The second reason delivered by their Lordships, was, That the King is sovereign; that as he is sovereign, he hath power, and that that *foreign power* is to be left: for my part, I would have it so, as not to mention it; but if it should be expensed to be left in this petition, as it is proposed, it must admit something to be left on the King of what we pray, or at least admit some *foreign power* in his Majesty, in these privileges which we claim to be our right, which would frustrate our petition, and destroy our right, as I have formerly showed.

The third reason given for this addition, was, That in the Statute of *Acting Privy Charter*, there is a saving of the Right and Sovereignty of the Crown.

To which I give three answers: That *Magna Charta* was confirmed above thirty times, and a general saving was in none of their Acts of confirmation, but in this only; and I for no cause would follow one ill, and not thirty good precedents; and the other, because that saving produced ill effects, that are well known.

That saving was by Act of Parliament; the conclusion of which Act is, That in all those cases the King did will, and all those that were in the making of that ordinance did intend, that the Right and Sovereignty of the Crown should be saved: by which it appears, that the saving was not in the Petition of the Commons, but added by the King; for in the petition, the King's will is not expessed.

In that Act the King did grant, and part with, to his people, divers rights belonging to his prerogative, as in the first chapter he granted, That the people might choose three men, which might have power to hear and determine complaints, made against their that officiated in any point of *Magna Charta*, though they were the King's Officers, and to live and remain there. And in the 8, 12, and 14 Chapters of that Statute, the King surrendered other prerogatives, and therefore there might be some reason of the adding of that *Sovereign Power*, by the King's Council: But in this petition, we desire nothing of the King's Prerogative, but pray the enjoying of our proper and undoubted rights and privileges; therefore there is no cause to add any words, which may imply a saving of that which concerns not the matter in the petition.

The fourth reason given by their Lordships, was, That by the mouth of our Speaker, we have this Parliament declared, That it was far from our intention to encroach upon his Majesty's prerogative, and that therefore it could not prejudice us, to mention the same resolution in an addition to this Petition.

To which I answer, That that declaration was a general answer to a message from his Majesty to us, by which his Majesty expressed that he would not have his prerogative diminished by any new explanation of *Magna Charta*, or the rest of the Statutes; and therefore that expression of our Speaker was then proper, to make it have no relation to this petition, then being nothing therein contained, but particular rights of the Subject, and nothing at all concerning his Majesty's prerogative.

Secondly, That answer was to give his Majesty satisfaction of all our proceedings in general, and no man can assign any particular, in which we have broken it; and this Petition justifies itself, that in it we have not offended against the prerogative: And I know no reason, but that this declaration should be added to all our Laws we shall agree on this Parliament, as well as to this petition.

The last reason given, was, That we have varied in our petition from the words of *Magna Charta*; and therefore it was necessary that a saving should be added to this petition.

I answer, that in the Statute 3 E. III. 25 E. III. 25 E. III. and other Statutes, with which *Magna Charta* is confirmed. The words of the Statute of explanation differ from the words of *Magna Charta* itself; the words of some of the Statutes of explanation, being, That no man ought to be apprehended, unless by indictment, or due process of Law; and the other Statutes differing from the words of *Magna Charta*, in many other particulars, and yet there is no saving in those Statutes, much less should there be any in a *Petition of Right*. These are the answers I have conceived to the reasons of their Lordships, and the exposition, I apprehend, must be made of the proposed words, being added to our petition. And therefore, I conclude, that, in my opinion, we may not consent to this addition, which I submit to better judgements.

The Commons afterwards appointed Mr. Glanville and Sir Henry Martineau to manage another conference to be had with the Lords, concerning the said matter, and to clear the friends of the Commons in that point: The one argued the legal, the other the rational part.

Mr. Glanville's Speech in a full Committee of both Houses of Parliament, May 23, in the Painted Chamber at Westminster.

MY Lords, I have in charge, from the Commons House of Parliament (whereof I am a Member) to express this day before your Lordships some part of their desire, touching one point that hath occurred in the great debate, which hath long depended in both Houses. I shall not need many words to induce or raise the question, which I am to handle in this conference. The subject matter of our meeting is well known to your Lordships, I will therefore only look to far back upon it, and so far recollect summarily the proceedings it hath had, as may be requisite to present clearly to your Lordships consideration, the nature and consequence of the particular wherein I must insist.

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Your Lordships may be pleased to remember, now that the Commons in this Parliament have framed a petition to be presented to his Majesty, a petition of Right rightly composed, relating nothing but truth, defining nothing but justice; a petition justly occasioned, a petition necessary and fit for these times, a petition founded upon solid and substantial grounds, the Laws and Statutes of this Realm, free rocks to build upon; a petition bounded within due limits, and directed upon right ends, to vindicate some lawful and just Liberties of the free Subjects of this Kingdom from the prejudice of violations past, and to secure them from future innovations.

And because my following discourse must rest chiefly, if not wholly, upon the matter of this petition, I shall here cease leave shortly to open to your Lordships the distinct parts whereof it doth consist, and those are four.

The first concerns lives of men, by way of Loans or otherwise, for his Majesty's supply; declaring, that no man ought, and praying that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament.

2. The second is concerning that liberty of person, which rightfully belongs to the free Subjects of this Realm, expressing it to be against the course of the Laws and Statutes of the land, that any Freeman should be imprisoned without cause showed, and then reciting how this Liberty, amongst others, hath lately been infringed, it concludeth with a just and necessary desire, for the better clearing and allowance of this privilege for the future.

3. The third declareth the unlawfulness of billeting or placing Soldiers or Marines, to lodge in free Subjects houses against their wills, and prayeth remedy against that grievance.

4. The fourth and last smeth at redress-touching Commissions, to proceed to the trial and condemnation of offenders, and causing them to be executed and put to death by the Law Martial, in towns and places, when and where, if by the Laws and Statutes of the Land they had deserved death, by the former Laws and Statutes also they might, and by no other ought to be, adjudged and executed.

This petition, the careful House of Commons, not willing to omit any thing pertaining to their duties, or which might advance their moderate and just ends, did heretofore offer up unto your Lordships consideration, accompanied with an humble desire. That in your wisdoms and justice, you would be pleased to join with them in presenting it to his Majesty, that by coming from the whole body of the Realm, the Peers and People, to him that is the Head of both, our gracious Sovereign, who must crown the work, as also all use labour is in vain; it might, by your Lordships concurrence and assistance, have the more easy passage, and obtain the better success.

Your Lordships, as your manner is in cases of great importance, were pleased to debate and weigh it well, and thereupon you propounded to us some few amendments (as you termed them) by way of alteration, adjudging, that they were only in matters of form, and not of substance; and that they were intended to no other end, but to sweeten the petition, and make it the more palatable with his Majesty.

In this the House of Commons cannot but observe, that fair and good respect which your Lordships have shewn in your proceedings with them, by your counselling or voting nothing in your House, until you had respected it unto them; whereby our meetings about this business have been justly filled free conferences, (either party repaying another discharged) to hear and weigh the other's reasons, and both Houses coming with a full intention, upon due consideration of all that can be said on the other side, to join at last in resolving and assenting that which shall be found most just and necessary for the Honour and Safety of his Majesty and the whole Kingdom.

And touching these proposed alterations, which were not many, your Lordships cannot but remember, that the House of Commons have yielded to an accommodation, or change of their petition in two particulars; whereby they hope your Lordships have observed, as well as you may, they have not been affected unto words and phrases, nor overmuch abating in their own ends; but rather willing to comply with your Lordships in all different things.

For the rest of your proposed amendments, if we do not mis conceive your Lordships, as we are confident we do not, your Lordships, of yourselves, have been pleased to relinquish them with a new sentence, for one only clause to be added in the end or foot of the petition, whereby the work of this day is reduced to our simple head, whether that clause shall be received or not?

This yielding of the Commons in part unto your Lordships, of other points by you somewhat insisted upon, giveth us great assurance, that our ends are one; and putteth us in hope, that, in conclusion, we shall concur, and proceed unanimously to seek the same ends, by the same means.

The clause proposed by your Lordships to be added to the petition, is this:

We humbly protest this petition is your Majesty's, not only with a care for preservation of Liberties, but with a due regard to Laws, where the Sovereign Power, whereunto your Majesty is intrusted for the protection, safety, and happiness of your People.

A clause phrases in few, and smooth in words, but in effect and consequence most dangerous, as I hope to make most evident; however, coming from your Lordships, the House of Commons took it into their considerations, as because them, and apprehending upon the fact debate, that threatened ruin to the whole petition, they did heretofore deliver some reasons to your Lordships, for which they then desired to be spared from admitting it.

To these reasons, your Lordships offered some answers at the last meeting; which having been faithfully reported to our House, and those debated as was requisite for a business of such weight and importance, I much joy truly as your Lordships, yet with due reverence to your opinions, the Commons are not satisfied with your arguments; and therefore they have commanded me to recollect your Lordships reasons for this clause, and in a fair reply to let you for the causes why they differ from you in opinion.

But before I come to handle the particulars wherein we differ from your Lordships, I will in the first place take notice yet a little further, of that general wherein we all concur; which is, that we desire not (neither do your Lordships) to augment or dilute the Liberties and Privileges of the Subjects beyond the just and due bounds, nor to encroach upon the limits of his Majesty's Prerogative Royal. And as in this, your Lordships at the last meeting expressed clearly your own opinion, so were your Lordships not mistaken in collecting the common sense and meaning of the House of Commons; they often have protested they do, and ever must protest, That there have been, and shall be the bounds of their desires, to demand and seek nothing but that which may be fit for lawful and loyal Subjects to ask, and for a gracious and just King to grant; for as they claim by Laws free Liberties for themselves, so do they acknowledge a Prerogative, a high and just Prerogative belonging to the King, which they intend not to diminish. And now, my Lords, being assured, not by strained inferences, or obscure collections, but by the explicit and clear declarations of both Houses, that our ends are the same; it were a miserable unshapeliness, if we should fall in finding out the means to accomplish our desires.

My Lords, the heads of those particular reasons which you insisted upon the last day, were only these:

First, you told us, that the word [leave] was of such a nature, that it could give no new thing to his Majesty.

2. That no just exception could be taken to the words [Sovereign Power], for that as his Majesty is a King, so he is a Sovereign; and as he is a Sovereign, so he hath power.

3. That the sovereign power mentioned in this clause is not absolute, or indefinite, but limited and regulated by the particle (that); and he word [subsequent] which restrains it to be applied only to protection, safety, and happiness of the people, whereby ye infer that, there could be no danger in the allowance of such power.

4. That this clause contained no more in substance, but the like expressions of our meanings in this petition, which we had formerly signified unto his Majesty by the mouth of Mr. Speaker, that we no way intended to encroach upon his Majesty's sovereign power or prerogative.

5. That in our petition we have used other words, and of larger extent, touching our Liberties, than are contained in the phrase whosoever it is grounded: In respect of which enlargement, it was fit to have fine expressions, or implied (aving, or narrative) declarations for the King's sovereign power, of which narrative you alledge this clause to be.

Lastly, Whereas the Commons, as a main argument against the clause, had much insisted upon this, that it was unprecedented, and unparalleled in a petition from the Subject, to insist a leaving for the Crown; your Lordships brought forth in answer to the contrary, the two Statutes of the 24 E. I. commonly called *unparliamentary charters*, and 24 E. I. known by the name of *Armig's paper charters*; in both which Statutes there are fairings for the King.

Having thus reduced to your Lordships memory, the effects of your own reasons, I will now, with your Lordships' favour, come to the points of our reply, wherein I must humbly beseech your Lordships to weigh the reasons which I shall present, not as the feint of myself, the weakest Member of our House, but as the genuine and true sense of the whole House of Commons, conceived in a business then debated with the greatest gravity and solemnity, with the greatest concurrence of opinions, and unanimity that ever was in any business maturely agitated in that House. I shall not, peradventure, follow the method of your Lordships recalled reasons as they answering to them, nor labour to urge many reasons. It is the desire of the Commons, that the weight of their arguments should recompense (if need be) the smallness of their number. And, in conclusion, when you have heard me through, I hope your Lordships shall be enabled to collect clearly, out of the frame of what I shall deliver, that in some part or other of my discourse there is a full and satisfactory answer given to every particular reason or objection of your Lordships.

The reasons that are now appointed to be presented to your Lordships, are of two kinds, legal and external; of which those of the former sort are allotted to my charge; and the first of them is this:

The clause now under question, if it be added to the petition, then either it must rest or relate unto us, or else not; if it have no such reference, it is not clear that it is needless and superfluous? And if it have such reference, it is not clear, that then it must needs have an operation upon the whole petition, and upon all the parts of it?

We cannot think that your Lordships would offer as a vain thing; and therefore taking it for granted, that if it be added, it would refer to the petition; let me beseech your Lordships to observe with me, and with the House of Commons, what alteration and qualification of the same it will introduce.

The petition of itself, simply, and without this clause, declareth absolutely the rights and privileges of the Subject, in divers points; and among the rest touching the liberties of men, by way of Loans or otherwise, for his Majesty's supply. That such loans and other charges of the like nature, by the Laws and Statutes of this Land, ought not to be made or laid without common consent by Act of Parliament: But when this clause is annexed with reference (to the petition), and it make necessarily conclude and have this exposition, That Loans and the like charges (true it is, ordinarily) are against the Laws and Statutes of the Realm, *unless they be warranted by sovereign Power*, and that they cannot be commanded or raised without assent of Parliament, *unless it be by sovereign Power*: What were this but to admit a sovereign Power in the King above the Laws and Statutes of the Kingdom?

Another part of this petition is, That the free Subjects of this Realm ought not to be imprisoned without cause showed. But by this clause a sovereign Power will be admitted, and left entire to his Majesty, sufficient to control the force of Laws, and to bring in his new and dangerous interpretation, That the free Subjects of this Realm ought not by Law to be imprisoned without cause showed, *unless it be by sovereign Power*.

In a word, This clause, if it should be admitted, would take away the effect of every part of the petition, and become destructive to the whole; for thence will be the exposition touching the billeting of Soldiers and Marines in Free-men's houses against their wills; and thence will be the

expedition touching the times and places for execution of the Law Martial, contrary to the Laws and Statutes of the Realm.

The scope of this petition, as I have before observed, is not to amend our laws, but to relieve us in the same than we were in before; whereas, if this clause be moved, instead of mending the condition of the poor Subjects, whose Liberties of late have been mutually violated by some Ministers, we shall leave them worse than we found them; instead of curing their wounds, we shall make them deeper. We have fed bounds to our defences in the great battles, whereas one is not to diminish the Pre-rogative of the King, by mounting it too high; and if we bound ourselves on the other side with this limit, not to abridge the lawful privileges of the Subject, by defending beneath that which is just, no man, we hope, can blame us.

My Lords, as there is mention made in the additional clause of *foreign Power*, I wish there likewise of a trait repaid in his Majesty, touching the use of *foreign Power*.

The word *Trust* is of great latitude and large extent, and therefore ought to be well and mainly applied and restrained, especially in the case of a King: there is a trait especially repaid in the person of the King of England, that that trust is regulated by Law. For example, when the King is made to prohibit things not *well* or *fit*, but only made *prohibita*, under certain forfeitures and penalties inaccrue to the King, and to the informers that shall sue for the breach of these; the Commons must and ever will acknowledge a legal and sovereign prerogative in the King, touching such Statutes, that it is in his Majesty's absolute and unshaken power, to grant dispensations to particular persons, with the clauses of *non obstant*, to do as they might have done before those Statutes, wherein his Majesty conferring grace and favour upon some, doth also do wrong to others. But there is a difference between those Statutes, and the Laws and Statutes wherein the petition is grounded: by those Statutes the Subject has no interest in the penalties, which are all the fruit such Statutes can produce, until by suit or information commenced he becomes entitled to the particular forfeitures; whereas the Laws and Statutes mentioned in our petition are of another nature: there shall your Lordships find us rely upon the good old Statute, called *Magna Charta*, which declareth and confirmeth the ancient Common Laws of the Liberties of England: These shall your Lordships also find as to such upon divers other most material Statutes, made in the time of King Edward III. and Edward IV. and other famous Kings, for explanation and ratification of the lawful rights and privileges belonging to the Subjects of this Realm. Laws not inflicting penalties upon officers, in *male prohibita*, but Laws declarative or positive, conferring or confirming, *ipso facto*, an inherent right and interest of Liberty and Freedom in the Subjects of this Realm, as their birthright and inheritance defendable to their heirs and posterity: Statutes incorporate into the body of the Common Law, ever which (with reverence be it spoken) there is no trust repaid in the King's *foreign Power*, or *Prærogative Royal*, to enable him to dispense with them, or to take from his Subjects that birthright or inheritance which they have in their Liberties, by virtue of the Common Law and of these Statutes.

But if this clause be added to our petition, we shall then make a dangerous overture to confound this good definition touching what Statutes the King is trusted to counsel by dispensations, and what not; and shall give an intimation to posterity, as if it were the opinion both of the Lords and Commons assembled in this Parliament, that there is a trait repaid in the King, to lay aside by his *foreign Power*, in some emergent cases, as well the Common Law, and such Statutes as declare or ratify the Subjects' liberty, or confer interest upon their persons, as those other penal Statutes of such nature as I have mentioned before; which, as we can be so much afraid, we believe assuredly, that it is far from the desire of our most gracious Sovereign, to affect to visit a trust, which being transmitted to a successor of a different temper, might enable him to alter the whole frame and fabric of the Commonwealth, and to dissolve that Government whereby this Kingdom hath flourished for so many years and ages, under his Majesty's most Royal Ancestors and Predecessors.

Our next reason is, that we hold it contrary to all course of Parliament, and absolutely repugnant to the very nature of a petition of Right, consisting of particulars, as ours doth, to clog it with a general *Savings* or Declaration, to the weakening of the Right demanded; and we are bold to renew with some confidence our allegation, that there can be no precedent example of any such clause in any past petition. This being well observed, by showing unto your Lordships the difference between a petition for the Law, and the Law ordained upon such a petition, and upon truly and petitionally the course that was holden in framing of Statutes before a *Hon. V.* different from that which ever since then hath been used, and is still in use amongst us, and by noting the times wherein these Statutes were made, which was about one hundred years before a *Hon. V.* besides the differences between these *Savings* and this clause; I doubt not but I shall give single satisfaction to your Lordships, that the Commons, as well in this as in all their other reasons, have been most careful to rely upon nothing but that which is most true and pertain.

Before the second year of King Henry V. the statute was that: when the Commons were factors for a Law, either the Speaker of their House by word of mouth from them, the Lords House joining with them, or by issue bill in writing, which was usually called their petition, moved the

King, to ordain Laws for the redress of such mischiefs or inconveniences, as were found grievous unto the people.

To these petitions the King made answer as he pleased, sometimes to pass, sometimes to the whole, sometimes by denial, sometimes by assent, sometimes absolutely, and sometimes by qualification. Upon these motions and petitions, and the King's answer to them, was the Law drawn up and ingrossed in the *Scrow-Roll* to bind the Kingdom; but this inconvenience was lost in time, so that sometimes the Statutes thus framed, were against the sense and meaning of the Commons, as whole defers they were ordained; and therefore in the 2 *Hon. V.* finding that it tended to the violation of their liberty and freedom, whose right it was, and ever had been, that no Law should be made without their assent, they then exhibited a petition to the King, declaring their right in this particular: *praying*, that from thenceforth no Law might be made or ingrossed as Statutes, by additions or diminutions to their motions or petitions, that should change their sense, or intent, without their assent; which was accordingly established by Act of Parliament. Ever since then, the Right hath been, as the law was before, that the King taketh the whole, or leaveth the whole of all Bills or Petitions, exhibited for the obtaining of Laws.

From that statute, and from the time when first it became constant and settled, we conclude strongly, that it is no good argument, because we find *Savings* in Acts of Parliament before the first statute of *Hon. V.* that those *Savings* were before in the petitions that the first statute thenceforth, for if the petition for the two *Loans* so much insisted upon (which petition, for any thing we know, are not now extant) were never so absolute, yet might the King, according to the usage of those times, add to the *Savings* in his answers, which passing from them into the Statute-Roll, do only give some little colour, but are not proof at all that the petitions all were with *Savings*.

This much for the general; to come now to the particular clause of 25 of *Edw. I.* which was a confirmation of *Magna Charta*, with some provision for the better execution of it, as Common Law, which words are worth the noting.

It is true, that Statute hath also a clause to this effect, That the King, or his Heirs, from thenceforth should take an *Aid*, *Tax*, or *Præfuge* of his Subjects, but by common assent of all the Realm, leaving the ancient *Aid* and *Præfuge* due and accustomed.

This *Saving*, if it were granted, (which is not, nor cannot be proved) that it was as well in the Petition as in the Act; yet can it no way imply, that it is either *in fact*, or that the clause now in question should be added to our petition: for the nature and office of a *Saving*, or exception, was exempt particulars out of a general, and to ratify the rule in things not exempted, but is no fort to weaken or destroy the general rule itself.

The body of that Law was against all *Aids*, and *Taxes*, and *Præfuges* in general, and was a confirmation of the Common Law, formerly declared by *Magna Charta*, the *Saving* was only of *Aids* and *Præfuges* in particular, so well delivered and restrained by the words, *except and excepted*, that there could be no doubt what could be the else meaning and extent of that exception; for the King's Right to those ancient *Aids*, reserved by that Statute to be taxed to him, was well known in those days, and is not yet forgotten.

These *Aids* were three; from the King's Tenants by Knights service, due by the Common Law, or general custom of the Realm: *Aid* to ransom the King's Royal person, if unhappily he should be taken prisoner in the wars; *Aid* to make the King's wife for a Knight, and *Aid* to marry the King's eldest daughter once, but no more; and that these were the only *Aids* allowed to be levied to the Crown by that Statute, appeareth in these clauses by the Charter of King John, dated at *Runnymede* the 15th of *June*, in the fifth year of his Reign, wherein they are enumerated with an exclusion of all other *Aids* whatsoever. Of this Charter I have here one of the Originals, wherein I beseech your Lordships to cast your eyes, and give me leave to read the very words which concern this point. Their words (my Lords) are thus: *Nullo foretium vel auxilium petentur in regno, nisi per commune consensum regni apertum, nisi ad vires regium rationabilis, et per consensum filiorum regum: nullum foretium, et ad filium regium per consensum filiorum maritandorum, et ad filium regium rationabile auxilium.*

Touching *Præfuge*, the other thing excepted by this Statute, it is also of a particular right to the Crown to wit know, that it needeth no definition, the King being in possession of it by every day's usage.

It is so necessary out of wine before the malt, and another behind the malt, of every thing bringing in above twenty tuns of wine, and here discharging them by way of Merchandise.

But our petition consisted altogether in particulars, to which if any general *Savings*, or words amounting to one, should be annexed, it cannot work to confirm things not excepted, which are none, but to confirm things included, which are all the parts of the petition; and it must needs beget this dangerous exposition, that the Rights and Liberties of the subject, declared and demanded by this petition, are not their absolutely, but *sub modo*, not to continue always, but only to take place, when the King is pleased not to exercise that *foreign Power*, wherein this clause admitted, he is trusted for the provision, safety, and happiness of his people. And thus their birthright and inheritance, which we have in our Liberties, shall by our own devices be turned into a mere treasury at will and sufficiency.

Touching the Statute of 25 *Edw. I.* *Antiqua forma Chartæ*, the scope of that Statute, among other things, being to provide for the better observing and maintaining of *Magna Charta*, hath in it manifestly two *Savings* for the King; the one particular, as I take it, to preserve the ancient *præfuge*, due and accustomed, as of wines and other goods, the other general, freignery of the Crown in all things.

To these two *Savings*, besides the former *statutes*, which may be for the most part applied to this Statute as well as to the former, I add yet further answer to the first of these two *Savings*, as to the same *præfuge* of wines, which is recited in the 25 *Edw. I.* but in terms, *mercatoribus*, for which the word (*auxilium*) is especially annexed to the word (*præfuge*); which I take for so much to be in explanation of the former Law: And about their words (*and of other goods*) be added, yet do I take it to be but a particular *Saving*, or exception, which being qualified with the words (*præfuge*, *auxilium*, and *mercatoribus*),

anyland) is not very dangerous, nor can be understood of Privilege or Liberties upon Goods of all Sorts at the King's Will and Pleasure; but only of the old and certain Customs upon Wool, Woolfells, and Leather, which were due to the Crown, long before the making of this Statute.

For the latter of the two *Joins* in this Act, which is of the more unusual Nature, and subject to the more Exception, it is indeed general, and if we may believe the concurrent Relations of the Histories of those Times, as well those that are now printed, as those that remain only in Manuscripts, it gave Dislike from the Beginning, and wrought no good Effect, but produced such Discontents and Troubles in the State, as we will may be borne in perpetual Observation, and that the like *Joins* in these and future Times may never breed the like Dislike: For from hence arose a Jealousy, that *Magna Charta*, which declared the ancient Right of the Subject, and was an absolute Law in itself, being now confirmed by a later Act, with this Addition of a general *Join*; for the King's Right in all Things by the *Join* was weakened, and that made doubtful, which was clear before. But not to depart from our main Ground, which is, that *Joins* in old Acts of Parliament, before the 2 H. V. are no Proof that there were the like *Joins* in the Petitions for those Acts, let me observe unto your Lordships, and do leave this Point, that about this Petition, wherein this Act of 23 Ed. I. was grounded, as perished, yet hath it pleased God, that the very Frame and Context of the Act itself, as it is now up, and entered upon the Statute-roll, and printed in our Books, doth manifestly import, that this *Join* came in by the King's Authority, and was one in the original Petition of the Lords and Commons; for it cometh in at the End of the Act after the Words (*Et sic resti*) which commonly are the Words of the Royal Assent to an Act of Parliament. And though they be moved and followed with other Words, as though the King's Council, and the rest who were present at the making of this Ordinance, did intend the same *Join*; yet is not that conclusive, so long as by the Form of those Times, the King's Answer working upon the Materials of the Petition, might be conceived by force to make the Law effectual, though varying from the Frame of the Petition.

The next Reason which the Commons have contended me to use, for which they still desire to be secured from adding this Clause to their Petition, is this: That offensive Law of 23 Ed. I. which confirmed *Magna Charta*, with a *Join*, relied not long in Peace, for it gave not that Satisfaction to the Lords or People, as was requisite they should have in a Case so nearly concerning them. And therefore about thirty-three or thirty-four of the same King's Reign, a later Act of Parliament was made, whereby it was enacted, that all Men should have their Laws, and Liberties, and free Customs, as largely and wholly as they had used to have at any time when they had them self; and if any Statute had been made, or any Customs brought in to the contrary, that all such Statutes and Customs should be void.

This was the first Law which I call now to mind, that reflected *Magna Charta* to the original Party, whereas it was first made, albeit it hath since been controverted about twenty times more by several Acts of Parliament, in the Reges of six and half just and gracious Kings, who were most apprehensive of their Rights, and jealous of their Honours, and always without *Joins*; so as it between 22 and 34 Edw. I. *Magna Charta* should be blighted with many *Joins* of the King's Rights or Sovereignty, which might be conceived to be above the Law; that Spain and Ireland was long since taken away, and cleared by these many absolute Declarations and Confirmations of that excellent Law which followed in after Ages, and to it flunck at this day purged and exempted now from any *Join* *Joins* whatsoever.

I beseech your Lordships therefore to observe the Circumstance of Time, wherein we offer this Petition to be presented to your Lordships, and by us unto his Majesty: Do we offer it when *Magna Charta* stands charged with *Joins*? No, my Lords, but at this Day, when latter and better Confirmations have vindicated and set free that Law from all Exceptions, and shall we now annex another and worse *Join* to it, by an unnecessary Clause in that Petition, which we expect should have the Fruits and Effects of a Law? Shall we ourselves relinquish or adulterate that, which our Ancestors took Care and Trouble to purchase and secure? No, my Lords, but as we should hold ourselves unhappy, if we should not amend the wretched Estate of the poor Subject, so let us hold it a Wickedness to impair it.

Whereas it was further urged by your Lordships, That to insert this Clause into our Petition, would be no more than to do that again at your Lordships Motion and Request, which we had formerly done by the Mouth of our Speaker; and that there is no Cause why we should recede from that which so solemnly we have professed: To that I answer and confess, it was then in our Hearts, and it is now, and shall be ever, not to encroach on his Majesty's sovereign Power. But I beseech your Lordships to observe the different Occasion and Reference of that Protestation, and of this Clause.

That was a general Answer to a general Message, which we received from his Majesty, warning us not to encroach upon his Privilege, to which, like dutiful and loving Subjects, we answered at full, according to the Integrity of our own Hearts; nor was there any Danger in making such an Answer in such a Manner, nor could we answer more truly or more properly. But did that Answer extend to acknowledge a *Joins* *Join* *Join* to the King, above the Laws and Statutes mentioned in our Petition, or to weaken the Liberties of the Subjects, thence declared and demanded? No, my Lords, it hath no Reference to any such Particulars; and the same Words which in some Cases may be fit to be used, and were unanimously to be entered, cannot in other Cases be spoken, but with Impudence at the least, if not with Danger. I have formerly opened my Reason, proving the Danger of this Clause, and am compassed to illustrate the Impenitency of adding it to the Petition by a familiar Case, which was put in our House by a learned Gentleman, and of my own Note. The Case is this, Two Masters or Lordships, by joining together, and purchase interposed, so as there is none directly to discern the true Breasts of either, as it may be touching the Confines where the Liberty of the Subject, and the Privilege of the Crown do border each upon the other, to the one of the Masters the King hath clear right, and as in actual Possession of it, but the other is the Subject's. The King being misinformed, that the Subject hath intruded upon his Majesty's Manor, albeit his Subject, whether he doth enter upon his Majesty's Manor,

or pretendeth any Title to it, or any Part of it. The Subject being now justly offended, maketh Answer truly to the King, that he hath not intruded, nor will intrude upon his Majesty's Manor, nor doth make any Claim or Title to it, or any Part of it. This Answer is proper and true; say, it was unanimously and all done of the Subject not to answer upon this Occasion. Afterwards the King, upon Colour of some double or single Master of Record, thrust into his Highness's Hands, upon a pretended Title, the Subject's Manor: The Subject then emboldened by Possession of Right to his Majesty, in reason Reluctant of his own Manor, and therein length down Title to his own Manor only: Were it not improper and absurd in this Case for him to tell the King, that he doth not intend to make any Claim or Title to his Majesty's Manor, which is not questioned? Doubtless it were. This Case, rightly applied, will fit our Purpose well, and notably explain the Nature of our Petition.

Why should we speak of leaving unto the King's Sovereign Power, wherein we encroach not, while we only seek to recover our own Liberties and Privileges, which have been seized upon by one of the King's Ministers? If our Petition did trench directly upon any Majesty's Privilege, would our saying, that we intended it not, make the using otherwise than the Truth?

My Lords, there is nothing so Protestation or Declaration in the contrary of that which we have not done, and to put in such a Clause, cannot argue less than a fear in us, as if we had invaded it: which was held in our Intentions. And touching your Lordships Observation upon the Word (*Joins*), if it be not a proper Word to give any new thing to the King, sure we are, it is a Word dangerous in another Sense; for it may amount, without all question, to acknowledge an old Right of *Joins* *Joins* *Joins* in his Majesty, above those Laws and Statutes wherein only our Liberties are founded; a Doctrine which we most heartily crave your Lordships Leave freely to pursue against. And for your Lordships pressing, that *Joins* *Joins* should be requisite for Preservation of his Majesty's *Joins* *Joins* *Joins*, in respect our Petition search in larger Words than our Laws and Statutes wherein we ground it: what is that but a clear Confession by your Lordships, that this Clause was intended by you to be as *Joins* *Joins* *Joins*? For other *Joins* than this we find not tenders by you. And if it be fact, a *Join*, how can it stand with your Lordships other Arguments, that it should be of no other Effect than our former Expression to his Majesty by the Mouth of our Speaker? But I will not mix up Collections of this Kind; I will only show you the Reasons of the Commons, why this Petition needeth no such *Joins*, what the Words of their Statutes be exceeded in the declaratory Part of our Petition: these things that are within the Equity and true Meaning of a Statute, are as good Laws as those which are contained in the express Letter, and therefore the Statutes of the 23 Ed. III. 30 H. III. Edw. IV. and other the Statutes made in the Time of King Edward III. for the Extension of *Magna Charta*, which hath been so often recurred to in this Parliament, though they differ in Words from *Magna Charta*, had no *Joins* annexed to any of them, because there consisted more than was contained in effect in that good Law, under the Words, *per legem judicium periam forem, non per legem nostram*, which by these latter Laws are expounded to import, that none should be put to answer without Preliminary, or Matter of Record, or by due Process, or West Original: and if otherwise, it should be void, and holden for Error.

It hath not been yet shewn unto us from your Lordships, that we have in any of our Expressions or Applications limited or misapplied any of the Laws or Statutes wherein we do rely; and we are very confident and well assured, that an such misapplication can be assigned in any Point of our Petition now under question: If therefore it do not exceed the true Sense and Confession of *Magna Charta* in the subsequent Lines of Resolution, wherein it is grounded, what Reason is there to add a *Join* to this Petition more than to their Laws; since we desire so, transferring the Fruits of these our Labours to Posterity, not only for the Justification of ourselves, in Right of our present and their future Liberties, but also for a brave Expression and perpetual Testimony of that Grace and Justice, which we assure ourselves we shall receive in his Majesty's speedy and clear Answer? This is the Thing we seek for, and this is the Thing we hoped for, and this is the Thing only will settle such an Unity and Confidence between his Majesty and us, and will such a Character in the Hearts of all his loving Subjects, as will make us proceed unanimously, and with all Expedition to supply him for his great Occasions in such Measure, and in such Way, as may make him late at home, and feared abroad.

St Henry Martin. My Lords, the Work of this Day, wherein the House of Commons hath employed the Gentleman there spoke last, and myself, was to reply to the Answer, which it hath pleased the Lord-Keeper to make to those Resolutions, which we had offered to your Lordships Consideration, in Justification of our Refusal, not to admit unto our Petition the Addition commended by your Lordships. Which Reason of ours, since they have not given such Satisfaction as we desired, and well hoped, as by the Lord-Keeper's Answer appeared, it was thought fit, for our better Order and Method in replying, to divide the Lord-Keeper's Answer into two Parts, a legal and a rational: The Reply to the legal your Lordships have heard, myself comes interested to reveal, which also consisted of two Branches, the first deduced from the whole Context of the additional Clause, the second enforced out of some Part.

In the first were these Reasons, That the same desired our Acceptance, First, as satisfactory to the King, secondly, to your Lordships, thirdly, agreeable to what ourselves had often protested, and professed expressly by the Mouth of our Speaker.

I must confess their Motives were weighty and of great Force; and therefore, to avoid misunderstanding and misconception, which otherwise might be taken against the House of Commons upon the Refusal of the proposed Addition, it is necessary to state the Question rightly, and to lay down the true Difference between your Lordships and us. Now, indeed, there is no Difference in Question between your Lordships and us, concerning this additional Clause in the Nature and Quality of a Proposition. For so established, we say it is most true, and so to be received and embraced by us, in *est de qualitate per se qualiter dicitur*, yea, and were that the Question, we should add to the Addition, and instead of due regard, if we have had, here, and ever will have, a special and singular regard

XVII. Proceedings against William Stroud, Esq; Walter Long, Esq; Jobn Selden, Esq; and others, on an Habeas Corpus, in Banco Regis. 1629. 5 Car. I.

ON February 23^d, the House of Commons being upon the debate of the petition of the petitioners, who had seized goods belonging to Mr. Roll, a Member of the House, dissolved themselves into a grand Committee, and at last resolved,
That Mr. Roll, a Member of the House, ought to have privilege of person and estate, but that the command of the King is so great, that they have it in their hands.

After which, the King's message, in justification of the farmers and officers of the customs, was taken into consideration, which was discussed warmly debated, and the Speaker being moved to put the question then proposed, agreed to do so, and said, That he was otherwise commanded by the King.

Then said Mr. Selden, Does not you, Mr. Speaker, put the question upon us as we stand yet? If you will not put it, we will put it, this we shall never be able to do any thing. They that say you say, they say, they say, the King's command is to do it. We do hereby the command of the King's order the House, and we say, by his Majesty's order, in the House, before which I am, appointed for my Speaker, and we say, before my Office.

Whereupon the House (in some heat) adjourned till Wednesday next.

On Thursday the 25th of February, both Houses, by Mr. Mordaunt's command, were adjourned until Monday morning the 28th of March.

Monday the 28th of March, the Commons sat, and upon the Speaker's putting the question, who said, I have a command from the King to adjourn till the 10th of the next, and put to laughter. And adjourning to go out of the Chamber, was notwithstanding held by some Members (the House knowing a dissolution till a proclamation was published in the House, 1. Against Force and Intimidation. 2. Against violence and power not granted by Parliament. 3. If any Merchant yield or pay tannage and poundage, not granted by Parliament, he should be reputed a betrayer of the Liberties of England.

Whereupon the King sent for the Serjeant of the House; but he was detained, the door being locked; Then he sent the Gentleman-Usher of the House, with a message; and he was refused admittance, till the last words were said. And then in such confusion the House was adjourned until the 10th of March. Nevertheless his Majesty, by Proclamation, dissolved the House of March, declares the Parliament to be dissolved.

Though the Proclamation was not published till the 10th and the day following. (The 11th of March) were dissolved from the Council to Daniel Hall, Esq; Sir John Herbert, Sir John Elliot, Sir Peter Heywood, John Rolfe, William Corbett, William Long, William Stroud, James Fiddler, Henry commanding their persons, appearance on the morrow. As which time, Mr. Holles, Mr. John Elliot, Mr. Corbett, Mr. Fiddler appearing, and refusing to answer out of Parliament what was said and done in Parliament, were committed close prisoners to the Tower; and Warrants were given (the Parliament being still in being) for the sealing up of the Studies of Mr. Holles, Mr. Selden, and Sir John Elliot. But Mr. Long and Mr. Stroud, who then, not for some time after appearing, a Proclamation issued forth for the apprehending of them.

The King purposing to proceed against the Members of the House of Commons, who were committed to prison by him in the Star-Chamber, called certain questions to be proposed to the Judges upon the 25th of March.

Whereupon all the Judges met at Serjeants-Inn by command from his Majesty, where Mr. Attorney proposed certain questions concerning the officers of justice of the Parliament-men committed to the Tower, and other persons: At which time, one question was proposed and resolved, viz. That the Statute of H. VIII. intitled, An Act concerning Richard Storde, was a particular Act of Parliament, and extended only to Richard Storde, and to those persons that had joined with him to prefer a Bill to the House of

Commons concerning Timony: And although the Act be private, and extendeth to them alone, yet it was as more than all other Parliaments, by privilege of the House, ought to have, viz. Privilege of Speech touching their matters debated in Parliament by a Parliamentary course.

The rest of the questions Mr. Attorney was willing to set down in writing against another day.

Upon Monday following, all the Judges met again, and then Mr. Attorney proposed the following questions.

1. Whether if any Subject hath received probable information of any Traitor or traitorous attempt or intention against the King or State, that Subject ought not to make known to the King, or his Majesty's Commissioners, when threatened he shall be rewarded, and that the King hath rewarded, and the reward thereof, in the end the King hath informed, may prevent the danger? And if the said Subject is, upon a probable information, or is to inform the person which shall be dangerous to himself, or to the safety and defence of the realm, whether it be not a crime in law, punishable in the Star-Chamber, as an offence against the general Justice and Government of the Kingdom?

2. The resolution and answer of all the Justices, That it is an offence punishable as aforesaid, so that this do not concern himself, but another, nor draw him into danger of Treason or Contempt by his answer.

3. Whether it is a good answer or excusation, being thus interrogated, and replying in answer, to say, That he was a Parliament-man when he received the information, and that he spoke thereof at the Parliament-house; and therefore the Parliament being now closed, he refused to answer to any such questions but in the Parliament-house, and not in any other place.

4. To this the Judges, by advice privately to Mr. Attorney, gave this answer, That this excusation being in nature of a Plea, and an excuse in judgment, was not punishable, until he were over-ruled in an ordinary manner to make another answer; and whether the party were brought in *De novo*, or by information, for this Plea he was not to be punished.

5. Whether a Parliament-man, committing an offence against the King or Country since a Parliament was, might, after the Parliament was closed, be punished or not?

6. All the Judges, was then, answered, by might, if he be not punished for it in Parliament; for the Parliament shall not give privilege to any offence committed in Parliament, to exceed its bounds and limits at his place and duty. And all agreed, That whilst he be not so compelled out of Parliament to answer things done in Parliament in a Parliamentary course; but it is otherwise where things are done voluntarily, for these are not the acts of a Court.

7. Whether if any Parliament-man shall refuse, or two or three shall jointly conspire to single false Jurors, as witnesses against the Lords of the Council and Judges, not with intent to question them in a legal course, or in a Parliamentary way, but to blast them, and to bring them to hazard of the people, and the Government to contempt, be punishable in the Star-Chamber after the Parliament is ended?

8. The Judges replied, That the same was punishable out of Parliament, as an offence committed committed in Parliament, beyond the offer, and besides the duty of a Parliament-man.

There was another question put by Mr. Attorney, viz.

Whether if a man in Parliament, by way of derogation, and set upon any irregular writing or writing the same in Parliament, shall say, The Lords of the Council and the Judges had agreed to trouble in the Liberty of the Subject, and the Privileges of Parliament, be punishable or not?

The Judges desired to be spared to make any answer thereto, because it concerned themselves in particular.

The

* Roll = in the Collections, Vol. II. p. 374, says, There were several questions proposed to the three Chief-Judges about matters in Parliament, to which they gave their answers, which being somewhat different from what is above, are here inserted.

Question I. Whether a Parliament-man, offending the King criminally or contumaciously in the Parliament-house, and not then punished, may not be punished out of Parliament? Answer. We answer, That if a Parliament-man, exceeding the privilege of Parliament, do criminally or contumaciously out of the King in the Parliament-house (and not then punished) may be punished out of Parliament.

Question II. Whether if any Subject hath received probable information of any Traitor or traitorous attempt or intention against the King or State, that Subject ought not to make known to the King, or his Majesty's Commissioners, when threatened he shall be rewarded, and that the King hath rewarded, and the reward thereof, in the end the King hath informed, may prevent the danger? Answer. We answer, That the King hath the power of commanding of advertisements of Parliament, as well as of calling persons in, or out of any Parliament; but for the answer to this, we have no particular answer to this, and the next independent question, we refer ourselves to the president and both Houses.

Question III. Whether if any King do command an advertisement to be made, to have out of a person to receive and deliver a person, and so on, may not be punished out of Parliament? Answer. We answer, That the King hath the power of commanding of advertisements of Parliament, as well as of calling persons in, or out of any Parliament; but for the answer to this, we have no particular answer to this, and the next independent question, we refer ourselves to the president and both Houses.

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the very grief intended to be remedied by this Statute; so that he cannot answer according to Law. It appears that whenever the words are a felonious Act, treachery, or slander, or what is at all. The words are, — *Subjacet contra Regem* — this helps not, for *subjacet contra Regem* is against the King, against his Crown and Dignity; that which disturbs the Commonwealth is against the King; the old Doctrine in Judgment against the King, as is before said. In 28 H. VI. *ubi supra*, fol. 19. the Lords and Commons before the King, that *William de la Pole* may be committed for divers Treasons, and finally other heinous crimes; and the petition held not good, because too general, whereupon they exhibit particular Articles against him. And therefore upon the whole matter prayed, that Mr. *Law* might be discharged from his imprisonment.

On another day, *Barley and Downer*, the King's Sergeants, argued for the King, that this Return was sufficient in Law to detain them in prison. *Barley* began, and said, That the case is new, and of great weight and consequence; and yet, under favour, the Privilege of the King, and the Liberty of the Subject, are not mainly touched therein; for the case is not so general as it hath been made, but particular upon this particular return. The Liberty of the Subject is a round point, the right whereof is in Law, just, and civilised. The Privilege of the King is as high point, in which every Subject ought to subsist. I intend not to make any declaration at the use of the return, I will only remember what the King hath done upon them both, in his speech which he made upon the Petition of Right, to wit, that the People's Liberties strengthen the King's Privileges; and that the King's Privileges are to defend the People's Liberties. Thus may the hearts of the people concerning their Liberties. The way which I intend to take in my Argument, is, to answer the objections and reasons which have been made, and to give some reasons, whereby this Return shall be sufficient.

The objections which have been made are reducible to four heads: 1. By what the Prisoner here shall be said to be committed and detained. 2. That this Commitment is against the Petition of Right. 3. That the cause which is here returned is general and uncertain. 4. That the offences mentioned in the Return are not but feasible; and therefore, notwithstanding them, the party is bailable.

For the first, as hath been said, that the Commitment here was by the Lords of the Privy-Council, and the significations of this cause is by the King's Bench. But I say, that there is a further reason in the Return; for the Lords of the Council do it by the command of the King, and they only give the command. I will not dispute whether the Lords of the Council have power to commit an offender or no, it is common in experience, as in H. VI. 23. *Page's* case is express in it. And as the Petition of Right is admitted, that they may commit. And this is not alleged that for a grievance, but the grievance there was, because the particular charge of commitment was not fixed. Some Books have been objected to prove, that the King, though in prison, cannot commit any person; in H. VI. 1. *Margaret de la Pole* 182. But the authority of that Book is sufficient, as the case is put at last, which was in trespass for entering of the Defendant. The Defendant said, That the place where, &c. is parcel of the Manor of D. whereof the King is seised in Fee, and the King commands us to cut. And the opinion of the Court was, that this is no plea, without showing a specialty or the command of the King. And then the whole Court says, That if the King commands me to arrest a man, whereby I arrest him, he shall have trespass or imprisonment against me, altho' it be done in the presence of the King. That the following words are to be understood, that the principal cause was of one command of the King by word, and then such command by deed to arrest a man is void. And in H. VII. 4. was objected; *Hagley* says, that *Arrestion* does not arrest. But the Court said, that the King cannot arrest a man for trespass or felony, but he may if he do wrong, the party cannot have his action. To this I say, That the Book there is to be understood of a wrongful arrest, for there is spoken of an arrest of false imprisonment; and a wrongful arrest cannot be made by the King.

2. It stands not with the dignity of the King to arrest any man. *Cole*, 4. 75. The King makes a lease for years, reserving rent, with condition of no entry for non-payment; he shall take advantage of the condition without any demand; and the reason there given is, that a *disseisin* and *conveyance* might be observed. So it is not behoving for the King in person to arrest any man, but the King may command another to do it. *Bracton* lib. 2. *de dispensatione* 100. *Arrestio*, fol. 59. says, That the Crown of the King is to do justice and judgment, and *facere* fairs, without which the Crown itself cannot subsist. Several significations are to be made upon those several words, — and the last words — *facere fairs* — signify, that the King hath a coercive power. *Bracton* lib. 1. amongst the Estates. The King said, Because we are not sufficient in person to do every thing, we divide the charge into many parts. We use the people's Justice, and a Justice implies one that hath power to do Justice in every kind, to wit, by imprisonment, or otherwise. 20 H. VII. 7. *Cole* 11. 85. it is said, That the King is the Chief Justice. And *Lambert*, in his Justice of Peace, fol. 3. says, That in ancient times, the Chief Justice of England called *Capitaneus Justitiarum* or *Princeps Justitiarum*, after the King in England. So that the King hath the same power of Justice, as the Chief Justice had. That imprisonment, &c. which is before consideration for felony, is not used toward the Subject as imprisonment for any fault, but is rather an arrest or restraint to avoid further inconvenience. 14 H. VII. 8. A Justice of Peace may arrest men mutually assembled, for prevention of further mischief. And the Book also says, That he may have his servants there to arrest men, for safeguard of the Peace. It is a case well known, that if a house be set on fire, every man may pull down the next house, for prevention of a greater mischief; so it seems concerning the necessities of State, they ought to be restrained and suppressed, till when should be stirred up by them to the same confusion. 22. *Ar* 56. and in E. IV. 45. in false imprisonment the Defendant justified, because the Plaintiff was mad and out of his wits, and that he had done some harm, so that he had bound and kept him to avoid further harm, which might be happened by his mad acts, and the justification was held good. So in matter of Government; to avoid contention, the King ought to have coercive power against those that are enraged. The objection was,

that this cause was against the Petition of Right. But I answer, That this cause is out of the words of that petition; the words of the petition were, — *Whereas by the Statute called, the great Charters, and by the Statute of 28 E. III. no Freeman may be taken or imprisoned, — yet against the tenor of the said Statute, the divers of your Subjects have of late been imprisoned, without any cause showed; and when for their deliverance, &c. they were brought before the Justices by Writ of Habeas Corpus, there to undergo and receive as the Court should order, and their Keepers commanded to certify the cause of their detainer, and no cause was certified, but that they were detained by your Majesty's special command, signified by the Lords of your Council, and yet were returned back to several prisons, without being charged with any thing to which they might make answer according to Law.* These last words are observable, — *without their being charged with any thing to which they might make answer* — these words do not refer to the return of the Habeas Corpus, for the cause returned therein cannot be transgressed, 9 H. VI. 54. but the Court took it as true. But the setting forth of the cause, and the answer to the same cause, is to be upon other proceedings, to wit, upon the Indictment for the offence, or otherwise. And there is a great difference between the return of a Writ to which a man may answer, and the return of an Habeas Corpus, 20 E. IV. 63. 3 H. VI. 11. 22. that the Sheriff return *Rejoins*, all testimonies of every circumstance ought to be showed; because it is fitting, that adding certain be brought into judgment. And upon showing of the grounds, as above, the Petitioner, that no Freeman in any fact may be as before is mentioned, be imprisoned or detained, *just* and a hath relation to such imprisonment, which is mentioned in the petition. And imprisonment mentioned in the Petition is, in which no cause at all was mentioned; then where any cause is showed, is out of the Petition, and that *just* is the word relative, appears by *Cole* 11. 62. where many cases are said to be to the same purpose, which see.

The third objection was, That the Return was general and uncertain. The Counsel on the other side had divided the words of the Return, but that is to offer violence thereto; for an explication shall not be made by fractions, but upon the whole matter. For the first words, — *Arrestion* — it hath been said, that the addition of the word *Arrestion* is but to make a fourth; But I say, That *Arrestion* is not the explication of the Return, but it only expelleth the nature of the offence; and yet *Arrestion* is a word observable by itself in the Law, and implies, that the thing is known and noted. By 27 E. 1. *Shenley* shall be punished, that let notorious offenders to bail; and by the Statute of 4 H. IV. cap. 3. a notorious or common Thief shall not make his purgation; and 26 E. III. 75. in a trespass for false imprisonment, the Defendant said, That the Plaintiff came into the Town of *Hattingley*, and because he was seen in the company of *R. de Thelby*, who was a notorious Thief, he, as *Justice* of *Hattingley*, took him upon suspicion. I confess, that — *for contempt* — in general, yes, it is *genera* generalization, and within the Petition of Right; but the words are, — *Arrestion* — it hath been said, that this might be by incorrect words or letters. — *Arrestion* — *Arrestion* — it hath been said, that this might be by contrivance to the King's Writ, or by *Arrestion*, as *Barley*'s case is. To this I answer, that these words which are taken to one purpose, ought not to be worth to answer; and this is against the common meaning of the words. *Cole* 4. Thus are a murderer, the Defendant shall not afterwards explain it to be a murderer of *Hares*, for the highest murder is intended. So here, the highest Government is intended.

4. It hath been objected, that — *for staying of Justice against us* — may perhaps be but an offence feasible; but that words joined with the former words, these this to be an offence of the highest nature; *Arrestion* is a special contempt. And although *Arrestion* is itself may be but a general offence, yet here it is, — *Arrestion* against us, as our Government — which makes it particular. It hath been said by one, that argued on the other side, that there is a general in a particular. *Cole* 4. p. 75. *Holland's* case, there is the word general, and there is a general in particular, as the State Ecclesiastical. Thirdly, There is more particular, as the Colleague, Deans, and Chapters. This being in a case of Return upon Habeas Corpus, no precise certainty is required. In an Indictment, a certainty of all circumstances is required; in Pleadings, a certainty is required; in Cause, a more precise certainty is in Bars, a certainty to accompany intent is enough. There is not such precise certainty required here as in Indictment or Cause, because the party ought to answer unto them; nor so much certainty required in this as in a Bar. And the Return is not uncertain, for, as it is said in *Plowden* 102. and 193. a thing is uncertain, where it may be taken indifferently one way or the other. But where the statement is the one way exceeds the statement the other way, it is not uncertain as it is here. The words are, — *for staying of Justice against us* — and our Government, and for staying of Justice against us — have is a certainty of indictment one way. There are many Writs which are more uncertain than this Return here is, and yet good. The Writ concerning the taking of an *Appellant* in general, and *facere habeat ordines*; and yet there are more sorts of *Appellations*. In the Writ concerning the moving of a *Leprosy*, the words are general, and yet it appears by *P. N. B.* that there are two kinds of *Leprosy*, one outward, and the other inward; and for the latter, the Writ concerning moving a *Leprosy*. So the Writ concerning the burning of an *Heretic*, and concerning the burning of an *Idiot* are general, and yet there are sundry kinds of *Heretics* and *Idiots*. But it hath been objected, that *Arrestion* is not a law-word, nor known in the Law, of which the Judges can take no notice; but the words to express offences of this nature, are Murder, Treason, Felony, &c. and that notwithstanding of *Arrestion* generally was ever first. To this I answer, perhaps it is true, that no Indictment was ever so made, because the form of an Indictment is precise; words of a rare required to appear, as appears in *Dyce* 69. 204. *Cole* 4. p. 75. *Arrestion* is a law word, yet in 5 E. VI. *Dyce* 69. it is said, that *Arrestion* implies *facere capere*, altho' the contrary hath been objected, that *Arrestion* by periphrasis are sufficient. The Warrant of a Justice of Peace to apprehend *J. S.* because of *prophane* malefactions, *interdict* *J. D.* is good enough, although there needs the word *interdict* in 5 E. II. *P. Trial* 54. *Arrestion* says, That a sufficient shall suffice to bind. Out of which it may be gathered, that a man may be indicted for misdemeanors. And it seems likewise, that an Indictment of *Arrestion* may be good, for 19

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* E. de la Jahan majestada, lib. 2. & the ed. by Jul.

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penal provisions of the Statute of the 12th year of the reign of Henry VIII, which is the only statute which contains any such provisions. Out of the whole range of the Statute, we have only one section, which is the 1st section of the 12th year of the reign of Henry VIII, which is the only section which contains any such provisions. Out of the whole range of the Statute, we have only one section, which is the 1st section of the 12th year of the reign of Henry VIII, which is the only section which contains any such provisions.

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of twelve, for a day, being allowed only to eat the food of the land of their origin, and to wear the dress of the country, and to be accompanied by a single companion and a single interpreter. The cause of this was the fear of the K'ang-hsi Emperor, who was then on the throne, that the Chinese might be deceived by the Tartars, and that they might be corrupted by them, and that they might be converted to their religion. The Emperor, therefore, ordered that the Chinese should be allowed to wear their own dress, and to eat their own food, and to be accompanied by a single companion and a single interpreter. The Emperor also ordered that the Chinese should be allowed to wear their own dress, and to eat their own food, and to be accompanied by a single companion and a single interpreter. The Emperor also ordered that the Chinese should be allowed to wear their own dress, and to eat their own food, and to be accompanied by a single companion and a single interpreter.

never looked after any of the Court, but fought a new and irregular way to be removed without them. The Lord Treasurer made a very honourable answer. That he would not move the King for Mr. Scobell to be removed by this means, until he sent him words, on his credit, that it was a legal way; and told that Judge, that Mr. Scobell was at the Judges' disposal, to remove back when they would, for it was not the King's meaning to do any thing contrary to the order of the Court, or their formal proceedings. So Writs were sent this *Michidun Term* to remove the four prisoners back again to the *Margate*.

The Case of Sir Miles Hildart, and William Stroud, Esq.

ON the 13d of January, the Attorney-General exhibited two several Informations, the one against William Stroud, Esq. the other against Sir Miles Hildart, Knight. The charge against both of them therein, was for several escapes out of the prison of the *Gatesby*: they both pleaded, Not Guilty. And their Cases appeared to be as followeth. The said William Stroud, and Sir Miles Hildart, were by the King's command committed to prison, for misdemeanours alleged against them, in their carriage in the House of Commons at the last Parliament. Afterwards in *Trinity Term*, *Ann 6 Carol*, both of them being by order of this Court, and by a Warrant from the Attorney-General to be removed unto the *Gatesby*; the Warden of the *Margate* (where they were before imprisoned) sent the said Stroud to the Keeper of the *Gatesby*, who received him into his House lately built, and adjoining to the prison of the *Gatesby*, but being not part thereof. After which receipt, the same night, he licensed the said Stroud to go with his Keeper unto his Chamber in *Coventry*, and there to reside. Sir Miles Hildart was also by the said Warden of the *Margate*, delivered to the Keeper of the *Gatesby*, but being sick, and abiding at his Chamber in *Westminster*, he could not be removed to the prison of the *Gatesby*, but there continued with his Keeper alio. Afterwards the Sick (as is intimated in *London*, they (with the licence of the Keeper of the *Gatesby*, as it was proved) retired with their Under-keepers to their several Houses in the Country for the space of six weeks, until *Michidun Term* next following, when by direction of the said Keeper they returned to his House; but in all that space it could not be proved, that they were in any part of the old Prison of the *Gatesby*, but in the new building thereto adjoining; unless

when they once withdrew themselves to a Close-stool, which was placed near to the Parlour, and was part of the old Prison of the *Gatesby*. This Evidence was given to both the Juries, and both of them returned their Verdicts severally, That they were not Guilty, according to the information exhibited against them. And in this case it was debated at the Bar and Bench, whether by this receipt and continuance in the new house only, it may be said, That they ever had been imprisoned? And the Judges held, That this voluntary retirement to the Close-stool made them to be prisoners. They resolved also, that in this and all other cases, although a Prisoner depart from Prison with his Keeper's licence, yet it is an offence as well punishable in the Prisoner as in the Keeper. And *Gatesby* made this difference between breach of Prison and escape; the first is against the Keeper's will, the other is with his assent. But in both the Prisoner is punishable, whereas in the whole Court agreed. It was also resolved that the Prison of the King's Bench is not any local Prison, confined only to one place, and that every place where any Prisoner is released of his Liberty is a Prison: As, if one take sanctuary and depart thence, he shall be said to break Prison.

In the next Parliament, which met April 13, 1640, it was referred to a Committee, to consider of the breach of privilege by Sir John Finch (the Speaker), 5 Car. I. who refused to put the question by command of the House; and the Committee ordered to have matter of fact, and to report.

Monday, April 26. Mr. Treasurer reported, that Sir John Finch late Speaker did not say, He would not put the question; but this, He doth not put it: That he left the Chair not to display the House, but to stay for Majesty.

The House thereupon resolved, That it was a breach of Privilege of the House, for the Speaker not to obey the commands of the House; and that it appeared the Speaker did adjourn the House by command of the King, without consent of the House, which is also a breach of Privilege; it was therefore ordered, that this should be humbly represented to his Majesty.

But this Parliament being soon dissolved, viz. May 5, 1640, nothing was done for these Gentlemen; but in the next Parliament, which met Nov. 3, 1640, reputation was ordered them; as will be shown in the following Proceeding.

XVIII. Proceedings against Sir JOHN ELLIOT, DENZIL HOLLES, Esq. and BENJAMIN VALENTINE, Esq. for seditious Speeches in Parliament; in B. R. Mich. 5 Car. I. 1629 +.

SIR Robert Heath, the King's Attorney-General, exhibited informations in this Court against Sir John Elliot, Knight, Denzil Holles, and Benjamin Valentine, Esqrs. the effect of which was, 1. That the King that now is, for weighty causes, each a day and year, did summon a Parliament, and to that purpose sent his Writ to the Sheriff of Cornwall to chuse two Knights: by virtue whereof Sir John Elliot was chosen and returned Knight for Cornwall. And that in the same manner, the other Defendants were elected Burgesses of other places, for the same Parliament. And thence further, that Sir John Finch was chosen for one of the Citizens of Canterbury, and was Speaker of the House of Commons. And that the said Elliot publicly and maliciously in the House of Commons, to raise sedition between the King, his Nobles, and People, uttered their words, That the Council and Judges had all conspired in a league under for the *Liberty of the Subjects*. He further showed, that the King had power to call, adjourn, and dissolve Parliaments: and that the King, for divers reasons, had a purpose to have the House of Commons adjourned, and gave direction to Sir John Finch, then the Speaker, to move an adjournment; and if it should not be obeyed, that he should forthwith come from the House to the King. And that the Defendants, by conspiracy aforesaid, spake a long and continued speech, which was recited verbatim, in which were divers malicious and seditious words, of dangerous consequence. And to the intent that they might not be prevented of uttering their premeditated Speeches, their intention was, that the Speaker should not go out of the Chair till they had spoken them; the Defendants, Holles and Valentine, did violent hands upon the Speaker, to the great disturbance and disturbance of the House. And the Speaker being got out of the Chair, they by violence set him in the Chair again, so that there was a great tumult in the House. And after the said speeches pronounced by Sir John Elliot, Holles did recapitulate them.

And to this information,

The Defendants put in a plea to the jurisdiction of the Court, because seditious offences are supposed to be done in Parliament, and ought not to be punished in this Court, or in any other, but in Parliament.

And the Attorney-General moved the Court, to over-rule the plea to the jurisdiction. And that, he said, the Court might do, although he had not demurred upon the Plea.

But the Court would not over-rule the plea, but gave day to join in demurrer this Term. And on the fifth Day of the next Term, the second shall be read, and within a day after shall be argued at bar.

Held, Chief-Justice, said to the Counsel of the Defendants; So far light we will give you: this is no new question, but all the Judges in England, and Barons of the *Exchequer*, before now, have oft been assembled on both sides; and have, with great patience, heard the arguments on both sides; and it was resolved by them all with one voice, That an offence committed in Parliament, criminally or consensually, the Parliament being ended, recks punishable in another Court.

Now, it is true, that we all resolved, That an offence committed in Parliament against the Crown, is punishable either by the Parliament in another Court; and what Court shall that be, but the Court of the King's Bench, in which the King, by intendment, sitseth?

Whilome. The question is now reduced to a narrow room, for all the Judges are agreed, That an offence committed in Parliament against the King or his Government, may be punished out of Parliament. So that the sole doubt which now remains, is, whether this Court can punish it.

Greatly agreed, That it should be resolved by all the Judges, because otherwise there would be a failure of Justice. And by him, if such an offence be punishable in another Court, what Court shall punish it but this Court, which is the highest Court in the Realm for criminal offences? And perhaps not only criminal actions committed in Parliament are punishable here, but civil also.

Mr. Major of Lincoln's-Inn argued for Sir John Elliot, one of the Defendants. The charges in the information against him are these:

1. For Speeches.
2. For Contempts to the King, in retelling the Adjournment.

* Mr. Whilome, in his Memorials, p. 16. Gys. In the Year 1491. Some of the imprisoned Parliament-men, upon their Petition, were removed from the Prison whither they were, to other Prisons, to prevent the danger of the sickness then increasing. Sir Miles Hildart put in Petition for his good behaviour, and so was discharged from his Imprisonment.

Ann 1631. Sir John Finch died, a grave and learned Judge; he fell into the King's displeasure, charged by his Majesty for *dividing constantly*, and so plainly, with him, in the *High Court* concerning the Parliament-men: as if he had given his opinion to the King privately one way, and thereby brought him on the Stage, and there left him, and then was of another Judgment.

His opinion was contrary to all the rest of the Judges. That a Parliament-man for Misdemeanors in the House, criminally, and by his Office and Oath, might be only impeached, and not further proceeded against; which seemed very strange to the other Judges, because it could not appear, whether the Party had committed an offence, which he might be punished for by law.

The King discharged him of his service by usage, yet he kept his place of Chief-Baron, and would not leave it but by legal Proceeding; because his Patent of it was, *Quous die sit poffit*, and it must be tried whether he did *non sit poffit*, or not: He never sat in Court after the King's death, yet held his place till he died.

The King at first intended to proceed against the above Gentlemen in the Star-Chamber, to which matter an Information was exhibited against them in this Court, on the 7th of May; but that being dropped, they were proceeded against in the King's Bench, and the same matter in effect were set forth as in the Information in the Star-Chamber.

See the Information in the King's Bench, the Defendants's Plea, the Attorney-General's Demurrer, &c. at large, *post*.

3. For the same reason with the other Defendants, to detain Mr. Speaker in the Chair.

In the execution of these matters, he argued much to the same intent he had argued before, therefore his argument is not repeated very briefly.

1. For his Speeches, they are an matter of accusation against some great Persons of the Realm; and as to them, he said, that the King cannot take notice of them. The Parliament is a Council, and the Grand Council is of the King; and Councils are secret and close, none other have access to those Councils of Parliament, and they themselves ought not to impart them without the consent of the whole House. 2. A Jury in a Law, which is taken to require of officers within the full jurisdiction, are faster to keep their own counsel, so the House of Commons inquire of all grievances within the Kingdom, and their Councils are not to be reversed. And to that purpose was a proviso, 2 H. IV. an. 12. That the King shall not give credit to any private reports of these proceedings, to which the King assents; therefore the King ought not to give credit to the information of these officers in this case. 3. The words themselves contain several accusations of great men; and the liberty of accusation hath always been Parliamentary. 30 E. III. Parliament-Roll, an. 22. 23. Lord Latimer was impeached in Parliament for felony offences. 11 E. II. the Archbishop of York, 18 H. VI. an. 18. the Duke of Suffolk, 14 Mar. Dy. 33. the Duke of Norfolk, 18 H. VI. an. 18. as Vice-Chancellor, 2 E. VI. c. 18. the Lord Speaker, 28 of King James, the Lord of St. Albans, Chancellor of England; and 21 of King James, Crawford, Lord Treasurer; and 1 Cor. the Duke of Buckingham. 3. This is a privilege of Parliament which is determinable in Parliament, and not elsewhere. 11 E. II. an. 7. the Parliament-Roll. A Petition exhibited in Parliament, and allowed by the King, that the liberties and privileges of Parliament shall only be decided there, and not in other Courts, nor by the Common, nor Civil Law. (See this case more at large in *Selden's notes upon Parliam. p. 42*.) 11 E. II. Roll of the process and judgment.

An appeal of Treason was exhibited against the Archbishop of Canterbury and others, and there the advice of the laws of the one Law and the other being required; but because the appeal concerned persons which are Part of the Realm, which are not tried elsewhere than in Parliament, and not in an inferior Court. 28 H. VI. an. 18. These being a question in Parliament concerning process, between the Earl of Arundel, and the Earl of Devon, the opinion of the Judges being demanded, they answered, That this question ought to be determined by the Parliament, and by no other. 31 H. VI. an. 25. 26. During the protraction of the Parliament, Thus that was the Speaker, was out in execution at the fun of the Duke of York; and upon the re-assembly of the Parliament, the Commons made law to the King and Lords to have their Speaker delivered. Upon this, the Lords demand the opinion of the Judges; who answer, That they ought not to determine the privileges of the House of Commons of Parliament. 4. That accusation in Parliament is in legal course of Justice, and therefore the secular shall never be impeached. 17 H. VII. and 18 E. Dy. 285. Forgery of false Deeds brought against a Peer of the Realm, and *John de Sandale* witnesses, doth not lie, *Child's Rep. c. 14. Case and Dyce's case*, where *divers cases* are likewise put to this purpose. 35 H. VI. 19. If upon the view of the body the day or cannot be found, the Coroner ought to enquire, Who first found the dead body? And if the first finder accuse another of the murder, that is afterwards acquit, he shall not have an action upon the case, for it was done in legal manner. So it is the duty of the Commons to enquire of the grievances of the Subjects, and the cause thereof, and doing it in a legal manner, 19 H. VI. an. 8. H. IV. 6. is conspiracy it is a good plea, that he was one of the mischief. 20 H. VI. 5. that he was a great Jew-merchant, and informed his Companions. And 21 E. IV. 6. 7. and 25 H. VI. 14. that he was a Justice of Peace, and informed the Jury, 27 E. IV. 12. to be to the same purpose. And if a Justice of Peace, the first Finder, a Juror, or Indictor, shall not be punished in fees: *Case*, a Member of the House of Commons shall not, who, as 1 H. VII. is a Judge. 27 E. IV. 44. may be objected, where two were indicted of a conspiracy, because they maintained one another; but the reason of the said case was, because maintenance is a matter forbidden by the Law, but Parliamentary accusation, which is our matter, is not forbidden by any Law. *Old's Rep. c. 56.* there was a conspiracy, in procuring others to be indicted. And it is true, for there it was not his duty to prefer such accusation. (1) The accusation was extra-judicial, and out of Court; but it was not in our case. (2) Words spoken in Parliament, which is a legitimate Court, cannot be questioned in this Court, which is inferior.

3. H. III. 19. and *Blunford* 137. will be objected, where the Bishop of Winchester was arraigned in this Court, because he departed the Parliament without licence; then it was the opinion of *Scrip*, and the case was cited, P. 3 H. 19. And it is to be observed, that the plea of the Bishop, there, was never over-ruled. From this I gather, that *Scrip* was not content to his opinion, which was sudden, being in the first Term to which the plea was entered; or if he were, yet the other Judges agree not with him; and also at last the Bishop was discharged by the King's Writ. From this I gather, that the opinion of the Court was against the King, as in *Pl. 20. in Fagg's case*, where the opinion of the Court was against the King, the party was discharged by Peter-Saul, 1 and a *Pl. 10. Mar.* hath been objected, where an information in this Court was preferred against Mr. Powdrell, and other Members of the House of Commons, for departing from the House without licence. But in that case I observe these matters. (1) That this information depended during all the life of the Queen, and at last was *pro deo*, by the death of the Queen. (2) In the said case, no plea was made by the justification of the Queen, as here it is. (3) Some of them submitted themselves to the fine, because it was easy, for it was but 53s. 4d. But this cannot be urged as a precedent, because it never came in judgment, and no opinion of the Court was delivered therein. And it is no argument, that because at that time they would not plead to the justification, therefore we now cannot if we would. (4) Those offences were not done in the Parliament-House, but elsewhere by their absence, which the Country may take notice, but not of our matters done in Parliament. And absence from Parliament, is an offence against the King's summons to Parliament. 10 E. II. Parliament-Roll 13. *Thomas Huchey* was indicted of High-Treason in this Court, for preferring Petition in Parliament; but 2 H. IV.

an. 30. he preferred a Petition to have this judgment voided, and so it was, although the King had pronounced him before. And 2 H. IV. an. 104. all the Commons in one petition to the same purpose, because this tends to the destruction of laws and privileges. And this was likewise granted. 4 H. VIII. c. 8. *Strad's case*. That all condemnations imposed upon one, for preferring of any Bill, speaking, or raising in Parliament, are void. And this hath always been conceived to be a general Act, because the process, time, words, and persons are general, and the answer to it is general, for a general Act is always answered with, *Le Roy et son conseil*, and a particular Act with *par son conseil*. And 33 H. VI. 17. 18. a general Act is always involved, and so this is.

Secondly, For the second matter, the contempt to the command of the adjournment, *See* 18. it was questioned in Parliament, whether the King can adjourn the Parliament, (although it be without doubt that the King can prorogue it). And the Judges resolve, that the King may adjourn the House by commission; and 27 E. IV. it was resolved accordingly. But it is to be observed, that none was then impeached for moving that question. (1) It is to be observed, that they resolve, that the adjournment may be by commission, but not resolved that it may be by a verbal command, signified by another, and it derogates not from the King's Prerogative, that he cannot do so, no more than in the case of 20 H. VIII. 8. that he cannot grant one sort of land by parole. The King himself may adjourn the House in person, or under the Great Seal, but not by verbal Message, for none is bound to give credit to such Message; but when it is under the Great Seal, it is *Toto Modo*. And if there was no command, then there can be no contempt in the disobedience of that command. (2) In this, no contempt appears by the information; for the information is, That the King had power to adjourn Parliaments. Then put the case, the command be, that they should adjourn themselves: this is no punishment of the Power which he is supposed to have. The House may be adjourned two ways, to wit, by the King, or by the House itself; the latter in their own voluntary will, which the King cannot compel, for, *Parlement* is not so.

Thirdly, For the third matter, which is the conspiracy; although this be supposed to be out of the House, yet the Act is legal, for the members of the House may advise of matters out of the House, yet the House itself is not so much for constitution, as for proposition of them. And 20 H. VI. 24. it, amongst which an sworn to the King, may enquire of matters elsewhere. (1) For the conspiracy to lay violent hands upon the Speaker, to keep him in the chair; the House hath privilege to detain him in the chair, and it was but lightly and feebly, and other Speakers have been so served. (2) The King cannot procure an information for trespass, for it is said, the King ought to be informed by a Jury, to wit, by indictment, or presentment. (3) This cannot be any contempt, because it appears not that the House was adjourned by the King, then the Speaker ought to remain in the chair, for without him, the House cannot be adjourned. But it may be objected, that the information is, That all these matters were done maliciously and sedulously. But to this I answer, that this is always to be understood according to the subject matters, 15 E. IV. 4. and 18 H. VIII. 5. A wife that hath title to have Dower, agrees with another to enter, (which hath right) that the against him may recover her dower. This shall not be called Covin, because both the parties have right and titles. (2) It will be objected, That if these matters shall not be punishable here; they shall be unpunished altogether, because the Parliament is determined. To this I say, That they may be punished in the subsequent Parliament, and so there shall be no failure of right. And many times matters in one Parliament have been continued to another, as 4 R. III. an. 18. the Lord *Berkley's case*, 30 E. III. an. 185. 20 E. III. c. 15. 6 H. VI. an. 45. 6. 8 H. IV. an. 12. offences in the fourth ought to be punished in Eve, and Erres offences were not held but every third year. *C. 10. dyble*, and 35 E. III. c. 15. A Parliament may be every year. *C. 6.* in this Court cannot be reversed but in Parliament, and yet it was never objected, that therefore these shall be a failure of right. 25 E. III. c. 2. If a new case of Treason happen, which is doubtful, it shall not be determined till the next Parliament. So in *Wylde*, c. 28. where a new case happens, in which there is no Writ, they shall be made till the next Parliament. And yet in those cases, there is no failure of right. And so the Judges have always done in all difficult cases; they have referred the determination of them to the next Parliament, as appears by a E. III. 6. 2. B. III. c. 13. H. VI. an. 35. E. II. an. 25. the case of dower of a rent-chance. And 7. the Judges retain to deliver their opinions concerning the union of the two Kingdoms. The preface case is at great rare, and without precedent, therefore, not determinable but in Parliament. And it is of dangerous consequence; for (1) by the false return, all the Members of the House of Commons may be questioned. (2) The parties shall be disabled to make their defence, and the Clerk of Parliament is not bound to disclose those particulars. And by this means, the debates of a great Council shall be referred to a petty Jury. And the parties cannot make justification, for they cannot speak their words here, which were spoken in the Parliament, without slander. And the Defendants have no means to compel any to be witnesses for them; for the Members of the House do not use to discover the Councils of the House; for that they are debated of justification, evidence, and witness. Lastly, By this means, none will adventure to accuse any offender in Parliament, but will rather submit himself to the common danger; for, for his pains he shall be imprisoned, and perhaps greatly fined; and if both these be unjust, yet the party so vexed can have no recompense. Therefore, &c.

The Court. The question is not now, whether these matters be offences, and whether true or false. But, admitting them to be offences, the sole question is, whether this Court may punish them, so that a great part of your argument is tending to the present question.

At another day, being the next, Mr. Gifford (who succeeded Mr. Mafes, as Recorder of London) argued for Mr. Powdrell, one of the Defendants.

1. In general, he said, for the nature of the crimes, that they are of four sorts:

1. In Matter.
2. In Words.
3. By Consent.
4. By Letters.

[illegible]

Narkary.

The Lord Chief-Judge delivers the Record.

Wine cyder quiden brevis diffus Capital, Justic. second. peed. Dom. Regis. in pñis est Parliament. prope. manibus potestit fecundum extense. ejusdem brevis & posita fallit. pñe de Maria Anno Regni Dom. Regis nunc Caroli sexti. pñe curam ipse Regis in pñis Parliament. ven. pñe D. H. modo Domus Holles Baro de Hildre per Samuel. Altru Attorn. suum & dñe quod in Record. & pñe pñe actum in redditione Judicii pñe. manifest. est Errat. vultu et in hac verba in Informatione pñe. mentio. fore dñe & populus. in domo Commun. Parliament. per peed. D. H. modo Domus Holles tunc exfime. Burges. pñe Burgo de Hildre in tunc pñe. Parliament. de fñe & audis & pñe in domo Commun. Parliament. de fñe & audis & pñe in Cur. Domini Regis & in hoc quod per Information. in dñe Record. mentio. idem D. H. modo Domus Holles operatur cum deduce & progulante quosdam verbor. in domo Commun. Parliament. actum cum transfir. & infult. facti. vñ & armis fup Johanne Finch poloco. quiden tunc domus Commun. Parliament. Ad que item D. H. modo Domus H. dñe fupra pñe pñe pñe tunc unum tantum Judic. reddet. et de utroque. per Cur. & unum fñit ut duo Judicia reddi & duo fñe impati debeat quia si fñe transfir. & infult. audis & tñtari fore pñe ut debet in Cur. Dom. Regis. vñ curam ipse Regis & tñtari & populus verbor. in domo Commun. Parliament. de fñe & audis & pñe in eodem Parliament. de fñe & audis & pñe in Parliament. ad fñe fñe pñe & tñtari. fñe.

Et Gualfredus Palmeri M^o. & Bar. Attorn. Domini Regis
sunt General. qui per eodem Dom. Rege in hac parte
sequitur professi, in prepe. persona sua pro eodem Dom. Rege

dicti quod nec in Record. & Process. prod. nec in redditione; Justit. non
in ullo est Errat. & per. No.

A Message was sent to the House of Commons by Sir William Gladstone, Sir John Lubbock, and Sir James Fergusson, to acquaint them, that the Lords do agree to it.

Votes which were delivered at the Conference yesterday.

Die Mercant., 14. April. 1868.

Whereas Counsel have been this day heard at the Bar, and well to argue the Errors alleged by the Lord *Holt*, Baron of *Wiltshire*, upon a Writ of Error depending in this House, brought against a Judgment given at the Court of King's Bench in 5 Car. 1. against the said Lord *Holt*, by the name of *Daniel Holt*, Esq; and the said Counsel, as also to maintain and defend the said Judgment on his Majesty's behalf. Upon due consideration had of what hath been offered on both parts thereupon, the Lords Spiritual and Temporal in Parliament do order and adjudge, That the said Judgment given in the Court of King's Bench in 5 Car. 1. against the said Lord *Daniel Holt*, and others, shall be reversed.

The Form whereof (to be affixed to the Transcript of the Record)
followeth:

ET quia Carus Præfatus de iudicio suo de se fuisse prorsus reddidit
sententiam adiungit, sed deus qui non perit? Gallus F. l'inc. dicitur
et Bernardus qui fignatur, Et, quam præfatus Denzil Damaus Holles
colorem Carus affuit ad hoc, ostendit, cum quatuor dies, Apres
nunc, fignatur, apud Welles, in Comitatu Midd' de iudicio suo
sententiam? quod Carus præfatus fignatur, Et, Ad quem dicitur Carus
præfatus non fuit præfatus Gallus F. l'inc. et qui fignatur, Et, quam præ
fatus Denzil Damaus Holles in præsenti præfatus, dicitur, qui, tolli, et
per amicum Carum non suo plures colliguntur, et fignatur præfatus, ma
terque dabitur in iudicio, confiderat, et per Carum præfatus, et
Tudicus præfatus et in ordine præfatus et alii in Reuerend' et Principi præfati
comperit, reuerent, aduocatur et præsenti præsenti habetur. Et quod præ
fatus Denzil Damaus Holles ad amicum quem dicit Denzil Damaus Holles
sententiam Tudit præfatus, amicit, testatur.

Jo. Brouse, *Chric. Perfluorocarbon*.

X. The Trial of *James Lord Uchiltrie*, for Calumnies and Slandorous Speeches against *James Marquis of Hamilton*; the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, tending to the fowing of Sedition betwixt his Majesty and the said Noblemen; at *Edinburgh*, Nov. 30, 1631. 6 Car. 1.

[From an Authentic MS.]

Causa Jughiarie S. D. N. Regis testis in pretorio burgi de Edinburgh, altimo die mensis Novembris, Ante Dom. Millesimam, Sexcentissimam, Trigesimam primo, per Honorabiles et Dilectos Viros, Magistros Alexandrum Colville de Blair, et Jacobum Robertson Advocatos, Jughiaris deputatos nobilis et potens domus Willelmi Comitis de Strathene et Montclivis, Dom. Grahame, Kilbride, et Kynport, prefidis ferebat Causam et Jughiaris generalis Dom. S. D. N. Regis tunc Regi fuit Scotie, arbitris cognovit. Actis vocatis et Causa lentius commisit.

Abstract

JAMES Lord Usher's details of the making of *Lesbians*, *Columnies* and *Sandwich Spectres* against *James Marquis of Hamilton*; the *Earls of Haddington, Roxburgh, and Burgh*; tending to the lowering of solitudes between his Majesty and the said Noblemen, are Majesty's loyal Subjects; in form and manner specify'd and set down in his *Discourse*.

Parlier, Sir Thomas Hope of Craighall, Knight and Baronet, Advocate to our Sovereign Lord for his Highness's entries.

My Lord Advocate produced an Añ of Secret Council commanding him to pursue *Verne Lord Ullswater*, now entered upon panel for the Cause contained in his Dittay, of the which Añ of Council the tenor follows: *And Halcyonathic Progrez adz de myle Novembere Ann Dom. M^ollym^o Somersone, Traggone prime.* Forasmuch as the King's Majesty, by his Letter directed to the said Lords of his Privy-Council, having signified his extreme dislike and indignation against the said *Verne Lord Ullswater*, as being his best house to be kept in close ward, that he stryd and exasit as according to the Laws of this Kingdom, for some Informations given by him, reflecting upon some Noblemen and Councillors of the same, before what Judicatory and Judges the said Lords should think fit and competent for that purpose; and his Majesty having, to that end, sent down to the said Lords some depositions under the Lord Ullswater's own hand, and some other Informations, touching the said *Verne Lord Ullswater*, and his Majesty, because they blowe concern other persons. And the said Lords having read and considered the same depositions, and having taken into their consideration, which is the most proper judgment for trying and confuting of matters of this kind, they have all with one voice found; and by the tenor of this Añ, finds and declares, that the Trial and Confuting of the said Lord upon the particular aforesaid, is most proper and convenient to be done in this Court, and accordingly they have so ordained. Sir Thomas Hope of Grighton, Knt. his Majesty's Advocate, do hereon draw up the said Lord Ullswater's Dittay, and to pursue him

minally thereupon, before his Majesty's Justice, upon the last day of January instant, and before his Majesty's said Advocate, to give a full copy of the same, the said Lord *Uchtriville*, heretofore and now of New-castle, under at night, to the intent he may have time to be advised thereunto, and to certify his Advocates, against his lawful defences competent to him against the same. Among the things whereof, the *extra* of this Act, shall be unto his Majesty's said Justice a Warrant, *arrestum de Libris armorum foresti Camerli S. D. N. Regis, per me Jacobum Prymrosle Clericum capitulum sed me fisco et subscrivimus manibus, et subscrivimus James Prymrosle*. After production and reading of the which Act of Council, my Lord Advocate also produced his Majesty's Letter, directed to the Lords of his Majesty's Privy-Council of this Kingdom, dated the 23rd of September 1671, together with two depositions of the Lord *Uchtriville*, the one dated the 20th of June 1671, the other upon the 24th of July 1671, and also several depositions made by Daniel Lord *Rox*, wherein two of the said dates are the 18th and 19th of June 1671, and the third upon the 24th of June 1671, all three copies thereof were in the hands of the deposition of the Committee of the Council of England. Of the which depositions and Letter above-written, directed by his Majesty to the Council, the same follows. In the first, the deposition made by *Jonus Lord Uchtriville* upon the 20th of June 1671.

Copia vera. The Examination of James Lord Uchiltrie, taken the 20th of June 1621.

THE *Mid-Examiner* faith, That on or about the 6th or 7th of *May* last, at the firm of the *Bear* near the *Bridge-foot*, the *Lord* *Roe* told this *Examiner*, that *Soldiers* and *travellers* did often hear *hoarse* clung's, where of those that *frail* at home had no notice; and *said*, he did believe there was a plot against this *Lord*. This *Examiner* witt'd him, if he had any good grounds to so think, that he should not fail to discover it. The *Lord* *Roe* said, he had no certain ground, but if he had say'd but five words longer in the *Low* *Castle*, he would have known the certain'y; and that he would have *hazard*ed his life but he would have had the *circum*

The 13th of May the Lord Ros came to this Examinant's Chamber, and there putting this Examinant in mind of the former Speech between them, he told this Examinant, that he had learned more certain than ever he had before from the Truth of their last Speech; whereupon he sent Page after Page to the Examinant, and this Examinant answered the Difficulty of it, and the Matter.

In the End his Lordship told this Examinant, that the Purposes of the Marquis of Hamilton's Letters (as divers of his Commissioners and Followers had informed him the last Lord Ros) was, that either they should not go out of England and Scotland, or if they did, they should return to England or Scotland, and surrender the King's Houses in Scotland, viz. the Castles of Edinburgh, Berwick, and Dunbar; and forty themselves in Leith, under the name of waiting, and should not be allowed, and so march forward into England. And this Examinant asking what could be their Intention to do so; the Lord Ros said, that he was informed they meant to take the King's Person, and to surrender him, to send the Queen into a Convent, and to captivate the young Prince with his Father, and to strike off the Heads of all the Principal Men about the King, both English and Scots. And in particular the Lord-Treasurer of England, the Earl of Arundel, Sir William Ashmole, and Sir Thomas Hope. And this Examinant being told before the Lord Ros discovered the Particulars, attended to this Examinant, this Examinant using Persecutions to him to reveal it, asked the Lord Ros what it might be, saying, it was either a French or a Spanish Faction. To which the Lord Ros said, it was neither; but told the Examinant what it was, and so revealed the Particulars in above-mentioned. Whereupon the Lord Ros being fully relieved to proceed to a further Discovery, and thinking it sooner to be done by this Examinant than by himself, left those whom it concerned might sooner be apprised, desired the Examinant to acquaint his Majesty or the Lord-Treasurer therewith.

The next Morning being Sunday the 14th of May at Night, this Examinant came to his Majesty with the Lord-Treasurer; but his Lordship being gone to Bed, by his Appointment, this Examinant came the next Morning, and told him, he had somewhat to reveal that concerned his Majesty, and all his Kingdoms and People. The Lord-Treasurer thereupon went instantly up to the King, and after the same Day, told this Examinant, that his Majesty had given him Commission to hear this Examinant's Relation. This Examinant further said, That the Lord Ros told this Examinant, that he had much of this beyond Sea from Robert Ashmole and David Rosely. But since his coming into England (as he told) he had spoken with Sir James Rosely, Sir James Hamilton, Colonel Alexander Hamilton, and Captain Douglas, and had gotten somewhat out of every one of them: He also said, he had spoken with the Lord Seyfford, and understood somewhat from him.

On Monday the 16th of May, this Examinant attended the Lord-Treasurer in Windsor, and entering into a Relation, in the very Beginning discovered, that the Matter which he was to relate concerned the Lord Marquis of Hamilton and his Adversaries, which to him he had named, the Lord-Treasurer continued him to say no more, until he had acquainted the King upon it, but told this Examinant that he and the Lord Ros should go privately to Greenwich, where the Lord-Treasurer would meet them. But the King being come towards Whitehall, this Examinant and the Lord Ros came back again, and were then appointed by the Lord-Treasurer to attend his Majesty on Tuesday at ten o'clock, which they did. This Examinant further said, That on Monday the 16th of May, this Examinant delivered to the Lord-Treasurer a List of Names, to represent to his Majesty the Strength of the Lord Hamilton's Party and Adversaries in London. At this Examinant's coming to his Majesty, this Examinant told the King, that the Baniens was a Treason intended against his Majesty, and the Party was the Marquis of Hamilton, so this Examinant was informed; and that it was the highest Treason that ever was intended, and was forty that any single Man should have a Hand in it, for it was a Shame to the whole Nation. And then the Lord Ros himself coming in, made relation to his Majesty, who remained him to the Lord-Treasurer, whereupon this Examinant coming to the Lord-Treasurer, and telling him the King had printed the List into him; the Lord-Treasurer said, that the Lord Ros would put his Relation in writing. Whereupon the Lord Ros and this Examinant went together, and sat up all Night; and the Lord Ros fell putting it into writing, this Examinant wrote it out of the Lord Ros's Papers, who on the Morrow brought the same to the Lord-Treasurer: But this Examinant was not then present; but the next Time that he came to the Lord-Treasurer, being asked by him whole the Hand-writing was, this Examinant said, it was his own Hand, and the Lord-Treasurer telling him that the Lord Ros had not subscribed it, this Examinant said, he would without doubt subscribe it. And about two Days after he brought the Lord Ros to the Lord-Treasurer, who read over the whole writing, and subscribed it by Name to it, saying, he would seal it with his Blood.

This Examinant further testified, That he told the Lord-Treasurer, that the Lord Ros told him, that he would put his Relation in writing, the Marquis should have the Face to deny it; which the Lord Ros then printed affidavit, inasmuch as the Lord-Treasurer said, There is the Baniens at an End, there needs no writing.

This Examinant further said, That on the Sunday Morning, when the Marquis of Hamilton came out of Scotland, the Lord Ros told this Examinant, that he had spoken with the Lord Seyfford, who assured him then he was to take the King, the Queen, and the Prince; and this Examinant asking how they should effect it, the Lord Ros replied, the Lord Seyfford had told him, they were great with the Earl of Dorset, who had the Command of the Prince. And this Examinant further said, That the Lord Ros told him, that he was assured by my Lord Rosely, that the Marquis and his Company would follow their Purpose, and my Lord Ros said, that James the Hamilton had taken from the Vent of the Baniens, and that Sir James Rosely had told him, he had 1500 Men in readiness upon Hear's Warning, but they should not come about London till their Business was ready ended, which this Examinant the same Morning acquainted the Lord-Treasurer, to the Intend that his Majesty might know thereof.

And further said, That shortly after the Lord Ros told him he had spoken with the Lord Seyfford, who told him, that the Matter which he had

formerly told him concerning the Earl of Dorset, was but a trifling thing.

This Examinant further said, That on that Sunday Morning he with the Lord-Treasurer to advise the King, that he should go to London for more Safety; and understanding the King had sent for the Lord Ros, this Examinant with the Lord Ros went not far, because the Lord Ros was gone to the Lord Seyfford's to learn more. And further said, That the same week being in the End of the King's Dinner, this Examinant told the King in these Words: Sir, we now know the Baniens, but know not the Time; and therefore, Sir, either do or die.

Upon Free, my Lord Ros's first Examination on, 21st of June, 1631.

IN the Examination of Donald Lord Ros, taken the 21st of June, 1631, the said Examinant said, that having heard in Scotland from David Rosely, that things as are contained in the written Relation which hath been delivered to his Majesty, and before having heard in Parliament those Expressions from Robert Ashmole which are in the same Relation, this Examinant having a Resolution to come for England about December fall, was stayed in Denmark by Reason of the Ice, so he came not to Holland till about March fall, where he had Conference with David Rosely, and heard from him such other Particulars as are contained in the same Relation. And after coming into England, because David Rosely had told this Examinant, that he would write to the Marquis of Hamilton, how far forth the said David Rosely had treated with this Examinant, this Examinant expected that the Marquis would have taken thereof unto him; he did therefore labour to say any thing thereof, yet about two or three Days before the Lord Marquis went into Scotland, this Examinant did speak to the Lord Usher in this Purpose: That his Lordship was better acquainted than this Examinant with the Factions and Levers of this Land; and desired to know what Danger it was, if any Man bearing beyond Sea of Things that might be dangerous to the King or State, should speak of it.

To which the Lord Usher answered, No less than our Head and Estate. And thus was all risk passed between them at that Time, being the first Time they spoke thereof; and the Place was (as he thinketh) at the Lord Usher's own Lodgings.

He further said, That about eight or ten Days after, this Examinant coming to the Lord Usher's Lodgings to talk of some other Business, after Speech thereof, spoke to this Effect: My Lord, you remember I asked you a Question a while since, what the Danger might be, not to speak of Matters dangerous to the King or State, which he had heard beyond the Seas, and I would now again have your Advice thereon. And the Lord Usher perceiving his readiness to advise him, so as he might be acquainted with the particulars, this Examinant told him, he would acquaint him with the particulars, if he would leave him not to discover it but as he should direct; adding, That if he did otherwise, this Examinant would pay him. The Lord Usher then said, and proceeded, That he would not discover any thing but as this Examinant should appoint, whereupon this Examinant declared the particular to him, who hearing it, told this Examinant it was needless to be revealed, and doubted not that this Examinant had kept it too long already: But then this Examinant said, Considering it concerned one so near the King as the Marquis of Hamilton, he thought it not fit that this Examinant should himself break it to the King, left the King should at last speak it, but it would be better for some other to do it, and therefore desired his Opinion how to discover it. The Lord Usher advising a while, said, He thought it best it were discovered to some of the Privy-Council; who upon the Examinant said, That he would not discover it to any Person, but thought it best to reveal it to the Lord-Treasurer, because he thought the Lord-Treasurer was no way in the Plot.

According to which Resolution the Lord Usher (as he after told this Examinant) did, according as was agreed between him and this Examinant, repair to the Lord-Treasurer the same Night; but (failing then to speak with him, he went the next Morning, before this Examinant saw him, and returning, told this Examinant he had been with the Lord-Treasurer, and in general imparted to him, that he had a Matter to discover which nearly concerned his Majesty: And said further, that it was an English Baniens, but it was (to his own Shame he spoke it) a Scottish Baniens, and was a Plot to kill the King.

After the Lord Usher and the King were appointed to wait on the King at Greenwich, whither this Examinant coming, found the Lord Usher waiting with his Majesty, and then this Examinant coming in, made a full Relation to his Majesty, who asking this Examinant whether he had used himself told his Majesty sooner of it, this Examinant answered, That considering the secrets of the Marquis of Hamilton to his Majesty, this Examinant was afraid lest his Majesty would have been impatient towards this Examinant, and rebuke his Majesty to forgive this Examinant, if he had thought he had done himself therein. His Majesty thereupon referred this Examinant to the Lord-Treasurer, and bid this Examinant put the Relation in Writing. Whereupon that Night this Examinant wrote the Relation to the Lord-Treasurer, and this Examinant writing it first down, the Lord Usher wrote it in the King's Secret, out of this Examinant's Paper. And the next Morning brought the same written Relation to the Lord-Treasurer, and read it unto him, and left it with him. And a Day or two after, this Examinant and the Lord Usher came again together to the Lord-Treasurer, the Lord Usher having told that this Examinant had forgotten to sign it; and then this Examinant signed it, saying, he would make it good with his Blood.

At that Time this Examinant remembers the Lord Usher told the Lord-Treasurer, that this Examinant had more to say yet, which this Examinant did then also affirm; and the Cause whereof he did affirm it, was, because this Examinant had spoken with the Lord Seyfford, and had found Particulars from him, which he did not particularly tell to the Lord Usher, but offered to him in the general, that he would say no more; but a Day or two after, this Examinant went again to the Lord Seyfford, and spoke with him, and then he told the same, first to the Lord Usher.

He further said, That the Lord Usher, on Sunday Morning, told this Examinant, that he had been with the Lord-Treasurer, and had told him of the Particulars with the Lord Seyfford, and of the Marquis's Return, and that he conceived it might be dangerous at that time for his Majesty. But this Examinant told him, he had done ever so often, for there was no such Danger to be feared: And on the

page 123. which Method of Trial being now disused, is not inserted in this Work.

Am

* See the Trial of Ros and Rosely by Combat, in *England's Collection*, Vol. II.

same *Swadley* in the afternoon, this Examinant coming to his Majesty, and hearing from him, that he had been adviser of some what importing matter of postest danger; this Examinant said, he had been with the Lord *Swadley*, but had not the certainty of things; his Majesty told him Majesty to give him leave to go again to the Lord *Swadley*, and then he would learn all. And at the same time his Majesty telling what danger had been suggested to him, now upon the Majesty's return; this Examinant perceived he knew nothing against the person of the Marquis; but that he was, for aught this Examinant knew, as good a subject as any the King had.

Copia Verba. My Lord *Roe's* second Examination, the 23rd of June 1633.

THE said Examination of Donald Lord *Roe*, taken the 23rd of June 1633. The said Lord *Roe*, having deliberately read the Examination of the Lord *Uchiltrie*, taken the 20th of the instant month, doth acknowledge the same to be true in all points, so far as the same concerneth the knowledge, words or acts of this Examinant, saving the explanation hereafter following: He saith, that as touching the conference between the Lord *Uchiltrie* and this Examinant the 19th of May last, where it is therein mentioned that this Examinant told him, that since the time of their last speech, he had learned more certainty than ever he had before; this Examinant did not say, that he had learned more certainty since their last speech, for in truth he had not learned any thing within that time. But thinks he might say, that he had learned more certainty since he came to England, than he had before; and therefore takes in, that the Lord *Uchiltrie* did mistake in that point.

And whereas in the same conference it is set down, that this Examinant should say that he was informed, that they meant to strike off the heads of all the principal men about the King; this Examinant said, that he was informed they would strike off the heads of the Spanish faction; and that he named the Lord *Treasure*, the two Bishops, the Earl *Marshall*, the Earl of *Carlyle*, Sir *Francois Cotton*, the Lord *Montagu*, Sir *William Alexander*, and Sir *Thomas Hume*, and likewise Sir *Kenneth Duglas*, and spoke of none other, neither in general nor particular; and saith, that he was informed touching the Spanish faction by Mr. *Adelston*, and *Donald Raney*; and touching the Scots by the Earl of *Swadley*. And saith, that *Adelston* and *Donald Raney* did name the aforesaid Englishmen to be of the Spanish faction. And whereas it is said, that this Examinant desired the Lord *Uchiltrie* to acquaint his Majesty or the Lord *Treasure* with the matter; this Examinant did desire him to acquaint the Lord *Treasure*, but did not mention his Majesty, but that it should come by the Lord *Treasure* to his Majesty.

He confessed, he said, that since his coming into England, he had spoken with Sir *James Raney*, Sir *James Hamilton*, and Capt. *Duglas*, and gotten somewhat out of every one of them; but did not say he had spoken with *Alexander Hamilton*, or gotten any thing out of him since this Examinant's coming into England.

This Examinant denieth, that he either said himself, or affirmed it being said by the Lord *Uchiltrie*, that he could say so much as the Marquis should not have the face to deny it; but said, he could being as honest a man as this Examinant, that would tell to the Marquis's face more than this Examinant would do; and thus he meant by the Lord *Swadley*.

He confessed that he said, Sir *James Raney* told him he had fifteen hundred men in readiness, but would not bring them together, till the parties in Scotland were full ready; and saith, Sir *James* told him as much, and that there were good officers, and the Earl of *Essex*, and the Archbishop of *Glasgow* were factors for some of them; and other than this, he spake not touching the 1500 men.

He saith, he was not acquainted with the list of the Names delivered by the Lord *Uchiltrie* to the Lord *Treasure*, nor had any thing to do therein.

Copia Verba. The second Examination of James Lord Uchiltrie, taken the 24th of June 1633.

THE said Examinant confesseth, that the understanding which he had of the business, concerning the Marquis of *Hamilton*, whom he hath been so often named, came to him from the Lord *Roe*.

He confesseth further, that the paper of Names which he did deliver to the Lord *Treasure*, was made by this Examinant himself, and the Lord *Roe* was not privy to the making of it, or to the delivery thereof to the Lord *Treasure*, till after it was done.

He saith, that the cause wherefore he did it was that paper mention the Lord Marquis to be prime Agent, was, for that the Lord *Roe* had told him, the Lord Marquis's followers had laid, the intent of the Marquis's letters was to invade Scotland. Being told, that the Lord *Roe* had been so far from charging the Marquis, that he hath affirmed before his Majesty, that for aught he knows, the Marquis is as good a subject as any the King hath; he is astonished, if in consideration and careful of the King's safety, and upon ground of the Lord *Roe's* relation, for the Lord Marquis's followers, he have gone any thing so far, he willeth his Majesty will impart it to his duty.

Being asked, why, in the aforesaid paper, he makes the Earl of *Adelston*, the Earl of *Roxburgh*, and the Earl of *Southdown* to be plotters, saith, that the Lord *Roe* told him, the Lord *Swadley* had affirmed it to him, that the Earls of *Adelston* and *Roxburgh* were acquainted with the particulars and secret of the business. And further saith, the Lord *Roe* had told him, he could not guess who else should be in the plot, unless it were the Lord *Swadley*; of whom the Lord *Roe* said, he heard him speak terrible and pernicious words against the King, at his own table in Holland.

He saith, the Lord *Roe* did affirm to this Examinant, that he had the aforesaid report of the Earl of *Adelston* and *Roxburgh* from the Lord *Swadley*, before he, this Examinant, made or delivered the said Paper to the Lord *Treasure*: The said Examinant doth answer, that on the 13th of May, the Lord *Roe* had affirmed to him, that since their former speech, (which was the 5th or 7th of May) he had learned more certainty than ever he had before.

He confesseth, that whereas in his former Examination, he said, the Lord *Roe* told him, he was informed that they meant to strike off the heads of all the principal men about the King; he was mistaken in mentioning all, and did not well mark himself when he so expressed it; his purpose being to have said, they would strike off the heads of many; for so, he takes it, was the scope of the Lord *Roe's* speech.

Being told that the Lord *Roe* denieth, that he spoke with Col. *Alexander Hamilton* since his coming into England, he saith, it is so true, that this Examinant might mistake in adding that name to the rest, and therefore will not count about that. He doth avow, that in the presence of

the Lord *Roe*, before the Lord *Treasure*, this Examinant said, the Lord *Roe* could say as much as the Marquis should not have the face to deny it; and was this Examinant said, the Lord *Roe* being then present, and hearing it, did not gainsay.

He saith, the Lord *Roe* told him, Sir *James Raney* said to him, that he had 1500 men in readiness, and the first next day, upon an hour's warning. But at a second time, the Lord *Roe* spoke of eight days waiting; and further, that he would not bring them to London till their business was ready.

Being acquainted with what *John Maule*, son to the Lord *Roe*, had confessed to have been told him by this Examinant, he doth acknowledge it, and that he said it to *John Maule*, after the Lord *Roe* and this Examinant had attended his Majesty about the same business, but did not think his speech thereof to *John Maule* should have done any hurt to the business.

Copia Verba. The third Examination of Donald Lord *Roe*, taken the 24th of June 1633.

HE saith, that the first time that the Lord *Swadley* had any speech with this Examinant, touching the Earls of *Adelston* and *Roxburgh*, being privy to the particulars and secrets of the Lord *Hamilton's* business, was on Monday after the Marquis's coming out of Scotland, and not before.

He further saith, that the Lord *Uchiltrie* having some speech with this Examinant, who might be like in Scotland to take arms, if the Marquis of *Hamilton* should take up arms; the said Lord *Uchiltrie*, and not this Examinant, named the Lord *Roxburgh*; whereupon this Examinant told him, that at the siege of the *Begs*, this Examinant heard the Lord *Roxburgh* use some words, whereby this Examinant took him to come male-content out of England.

The Tenth of his Majesty's Letter directed to the Lords of his Majesty's Council of Scotland

Charles R.
"RIGHT truly and right well-beloved Cousins and Counsellors; right trusty and well-beloved Cousins and Counsellors, and right trusty and well-beloved Counsellors, we greet you well. The Lord *Uchiltrie* having been examined before our Council here, touching some information given by him, reflecting upon some of the Nobility of that our Kingdom; we have been pleased to remit him thence, to be try'd according to the Laws thereof; having to this purpose sent you herewith inclosed some depositions under his own hand, and the authentic copies of others, whereof the principals we cause to be referred here, because they likewise concern other persons. Our pleasure is, that having given order for receiving and committing him to safe custody, you cause try and condemn him according to our said Laws, before what Judicature; and Judges you shall think fit and competent for that purpose, and for your so doing thereof shall be sufficient Warrant. Given at our Honour of Hampton-Court, the 24th of September 1631."

After this, my Lord Advocate produced the list of Names, or representation written and given in by him to the Lord *Treasure* of England, upon the 16th of May 1633, together with the Lord *Uchiltrie's* duty, of the which list or representation and duty aforesaid, the tenor followeth:

The tenor of the List.

Representation for my Lord *Treasure*.

The Marquis of *Hamilton* is prime Agent.

Pioters.

The Earl of *Adelston*.

The Earl of *Roxburgh*.

The Earl of *Southdown*.

The Earl of *Kinghorne*.

The Earl of *Argyll*.

The Earl of *Glouern*.

The Viscount *Levenstoun*.

The Marquis of *Heathly*.

The Earl of *Wigton*.

By near Alliance by his two Sisters.

The Earl of *Essex*.

The Viscount *Drumlogie*.

The Earl of *Adelston* hath Alliance and Affinity.

The Earl of *Caithness* his Son-in-Law.

The Lord *Grey* his Son-in-Law.

The Lord *Grey* his Grandchild by his Daughter.

The Lord *Grey* his Grandchild by his Daughter.

The Lord *Grey* his Son-in-Law.

His eldest Son married to the Earl of *Adelston's* Daughter;

And for Brother-in-Law to the Lord *Essex*, now Keeper of his Majesty's two principal Castles of *Strathclyde* and *Edinburgh*; and for Commander of all almost of his Majesty's Ordnance in Scotland.

The Earl of *Adelston's* son; likewise Brother-in-Law to the Earl *Marshall*, and to the Earls of *Archer* and *Argyll*.

The Earl of *Adelston's* second Son, married to the Lord *Hamilton's* Daughter.

The Earl of *Adelston* himself Brother-in-Law to the Earl of *Southdown*, and to the Lord *Southdown*.

The Earl of *Southdown*.

Brother-in-Law to the Earl of *Perth*.

Father-in-Law to the Constable of *Dundee*.

Father-in-Law to the Lord *Pittar*.

And the said Lord *Southdown* able to raise of his own friends and followers above 1000 Gentlemen in two days.

The Earl of *Southdown*.

The Earl of *Southdown*, Nephew to *Southdown*.

The Earl of *Southdown*, Brother-in-Law to the Lord *Essex*.

The Lord *Essex*.

The Earl of *Winton*.

The Lord *Southdown*.

The Lord *Essex*.

And Edinburgh Fifeshire near Newcastle 1633.

In presence of the Bishop of Dunblane, my Lord of *Caithness*, my Lord *John Clerk*, and *Justice Duglas*.

The which day *James Lord Uchiltrie* being present before the Lords Examinators above-named; and the list of Names before mentioned being

Shrines, of the reading thereof, and of the Acts of Parliament let down in the proposition of the said Indictment. And because the falsification of the said Indictment is founded upon certain depositions made in England, in presence of five of his Majesty's Councilors, deputed by his Majesty to that effect, he therefore repeats the examinations of the Lord Treasurer produced yesterday, in process, dated the 20th and 24th of June last, with the three Examinations of my Lord Res's, whereof two are dated the 28th of June, and the third upon the 24th of June: And declared, that he used these depositions under the hands and subscriptions of the five Councilors of England, as authentic copies, which should make as good faith, as if the principal were produced.

It is alleged by Mr. Alexander Parry, as Prosecutor for the Panel, that it cannot, nor should not be proceeded against the Impanelled here in Scotland, but conform to the Laws and Statutes of England; the place of the Panel his office, (if any be) and not conform to the municipal Laws of Scotland. * *Quia de jure Juxta original vel demerit* * his res potest primum habundant delinquentiam extra territorium, nisi fecit * eundem personam impunitam a jure communi, vel secundum statuta loci * in quo delinquit non, sicut secundum legem ipsius loci original, vel * delinquent. * Julius Clarus, Quest. 85. Num. quarto.

It is answered by my Lord Advocate, that the Allegation is no ways relevant, except the Panel will confeder to the relevance of the ditty; and of his own consent be content, that the same goes to the knowledge of an Affair. Next, it is answered by his Majesty's Advocates, that he opposes his Majesty's Letter direct to the Council, bearing, that the Impanelled shall be tried according to the Laws of this Kingdom. And in the one place it shall be justified, that his Majesty's Letter shall be grounded upon the Civil and Common Law.

It is answered there by the Lord Uchiltrie and his Prosecutors, that the King's Majesty's Letter is, and shall be understood, without prejudice, of the Panel's lawful defence.

Item, That the alleged Crime, contained in the ditty are, or perchance may be, lawful in England, and yet criminal in Scotland; and it carries no reason that the Panel should be punished here in Scotland, for say (as committed in England, not punishable by the Laws of England, where the Panel is now resident).

Answers, It is alleged by the Panel, that the falsification of the Indictment has no dependence upon the proposition thereof; because the particulars contained in the falsification are no ways the Lesings mentioned in the said Acts of Parliament, whereupon the proposition is founded, especially fixing the Lesings mentioned in the said Acts, as Lesings tending to discord between the King and his people; and the telling thereof is unlawful and prohibited. But the particulars of the ditty or indictment are no ways such. But by the contrary, the manner thereof seems as brazen Treason against the King's Majesty and Estate; in favour of both, proper public animosity, it is incumbent to every subject that shall hear speeches of such matter, though the matter itself be a lie and untruth, which it is to the hearer, neither does it belong to him, so judge or discern therein; it is incumbent, I say, to every subject incessantly to tell the fame, the telling whereof tends not to discord between the King and his people; but to suppose and prevent the same, and the chief cause thereof, which is Treason, and the not telling and revealing whereof is punishable by the Law of all Nations, by our municipal Laws and Acts of Parliament; yea, by the same Acts, whereupon the ditty is founded, viz. James VI. Parliament 14. cap. 205. And therefore, the telling thereof is no ways prohibited and punishable by the said Acts, neither are these particulars in the Indictment, the Lesings mentioned in the said Acts, which is evident, contained in the ditty. And which last Act being the last in time, as it satisfies, so it explains the true sense of the former.

And further, it is alleged by Gilbert Naylor, Prosecutor for the Panel, that not only by the former Act, of the 14th Parliament of King James VI. whereupon the ditty is founded, is there a secrecy laid upon the Impanelled, and all his Majesty's Lieges to reveal what they hear, concerning his Majesty's person; but likewise by the 13th Act of James VI's last Parliament, it is specially statute, that whoever hears any speeches to the harm or prejudice of the King's Majesty's Estate, shall with all diligence relate the same to his Majesty, or to some other of the King's Majesty's Officers, that may make the same manifest to his Majesty, with this special addition, that in case the ditty is not done, the prison officers, and not tiller, rewarder, shall incur the like punishment, contained in the said Acts, set down against the principal Lesing-makers. And so the Impanelled is necessitate, upon no less pain than his life and estate, to reveal the same. It is answered by his Majesty's Advocate, That this preceding defence can elude no part of the ditty, because the first part thereof asserts the lawfulness necessity of revealing of Treason is granted in the Ditty or Indictment. And if the Panel had contained himself within the duty of revealing, albeit the Plot and Treason revealed had been false, yet he would have deserved commendation and reward from his Master. But the Indictment is founded upon three particulars, to the which no answer is made, and which three particulars agree and quadrates with the material quality of the Lesings, contained in the Acts of Parliament, whereupon the ditty is founded. Because they are facts, as might have engendered discord between his Majesty and his loyal subjects, in so far as is qualified in the ditty, that the Impanelled having only had his relation from the Lord Res, and which relations had no warrant against the Marquis of Hamilton's person, as author or editor of the Treason, nor against the three Noblemen as Placiers, but depended on his own motives, yet relative relation to others, that is, from David Ransley, and Mr. Robert Alderman, of whose neither of them do relate any thing that could prove against the Marquis, but simply upon the speeches and report of those, whom they call his followers, or upon their imaginations, or possibly faith and perverie wilfuls, that the Noblemen who was employed for the levying of an army for aiding the King of Sweden, should employ his forces to the destruction of the King of Great Britain, these three persons, and Kingdom. Yet the Impanelled, which as he might have sufficiently express his loyalty duty to his Majesty, by bringing the fact and law to his Majesty, to make his own relation, did at the first appearance before his Majesty turn the uncertain report and relation to a positive speech, showing that the business was a Treason, and the

party the Marquis of Hamilton. Next, the Panel, by his representation all written with his own hand, and delivered to my Lord-Treasurer of England, to be shown to his Majesty, he has exposed the Lord Marquis to be prime Agent, and the heirs of Haddington, Roxburgh, and Broughty, to be plotters; and he has added to the number of twenty or thirty Noblemen, as adherents to them. And last, when his Majesty had received this positive information, and was refreshed with appearance of the truth thereof, so as to add a spark to the fuel, the Motto was given, *Sic, non* either de oris, which words could not contain any other intension or event (if his Majesty had not been graciously and justly disposed), but either to have used some violent course against the Marquis's person and life, or to commit him so prison, and to cause him to make answer as to Treason, as Perjury; which is the condition of Traytors, both by the Common Law and by the Act of Parliament, made by King James II. Parliament 12. cap. 49. whereby it is ordained, that persons standard of Treason, shall be taken and remain in firmance, where they shall be Affine. And all the proceedings are directly contrary to the Act of Parliament, whereupon the ditty is founded, especially in relation to the Panel, by his deposition made the 24th of June, wherein he testifies, in relation to the Lord Res's last speech, that the Lord Res granted that he had no certain ground for the Treason alleged by him; and it is an heinous and odious fact, punishable by all laws, to turn relation into delation, and to be an author or adviser to a forty-eight Prince, to begin at execution before Trial. And all the particular points of the ditty are clear, and evident by the deposition of the Impanelled, made upon the 20th and 24th days of June; while are the true copies of the original and authentic depositions, made in the presence of five of his Majesty's Council in England; like as the copies produced and read in presence of the Panel, and his Prosecutors, are falsified by the said five Councilors; and also are declared by his Majesty's Letter, directed to his Council the 14th of September, to be true copies of the said depositions, whereof the principals are returned by his Majesty, for the falsification contained in the said Letter. And therefore ought to have full faith, as if the principals were produced, like as the Panel by his Acts de calumnie will not refuse, but that the representation containing the link of the names was given in by him, without the privity of the Lord Res, and also that he gave these words to his Majesty upon the Sunday after dinner, being the 23d of May, which was the last time day that the Marquis came from Scotland to England, and was to prefer him to his Majesty, viz. the purpose is known, the time not known; *Sic, non* either de oris in respect whereof the allegation ought to be repelled.

It is replied for the Panel by his Prosecutors, as to the particulars contained in my Lord Advocate's answer, they cease to answer him now in the general, saying they are upon the relevancy of the Ditty and Indictment, and last answer every one, *figuraliter*, as they lie in the indictment, *facti*.

To be, It is alleged for the Panel, that the Particulars contained in the Indictment are not Lesings; * *quod referentur neque in genus referuntur*, quantum quantum in lege est non fallit, sed fallitur, & quocumque * *fallitur vel mendacit in soluti iure, id ad sua auctoritate referendum*, 2. cap. 15. autem 22. Quest. 2. cap. 5. Item, *Beatus Paulus ibidem, ubi dicitur, non mentiri cum quibus non fallitur, non habet quod est effinitive & formale mandatum, impositum filii & intencio fallendi*. And the telling and revealing of the whisks matters aforesaid, * *nellum habet in se delictum, sed est de natura boni*, being commanded, and therefore in the hearer and relater, a professor omnis doli abstinere, quia pascere non debet, &c. And frequently such a byre as this, which foolishly concerns the King's Majesty and Estate. Whereof there was no great appearance, by the relation made by the Lord Res, while the Panel craves may be read to the Judge.

It is answered by my Lord Advocate, that if the defence means of the Treason related by the Lord Res, the Panel cannot be quarrelled for it, nor for telling thereof, albeit it were a lie. But the Lesings and Calumnies affirmed upon in the ditty, arises upon the contradiction, betwixt that which was related by the Lord Res, and that which was spoken and affirmed positive to his Majesty. And where it is alleged, that * *mendacium est semper cum animo fallendi*, that is, * in contrarietate inter intellectum & vocem ejusdem persone, where he thinks one thing, and speaks another, which is not our case. But *mendacium est falsitas, ubi non est veritas*, is the difference and the contrariety between the relation made by the Lord Res, and that which is related by the Panel; wherein the Panel was obliged, as a faithful subject, to make a simple or true relation, * *sine Paraphrasi, sine Periphrasi, sine Interpretatione, vel Circumlocutione, & ut in Apophrasi vel exemplari committitur falsitas*, it transgredidit diffinitio exemplari, its committitur falsitas ubi relatio positive referuntur, which is the Lesings, whereupon the ditty is founded. And where it is defined that the Lord Res's relation may be produced and read to the Judge, if it be meant of that relation which is subscribed by the five Councilors of England; and if the Panel will acknowledge it, to make faith as the principal, together with the remanent depositions of the Panel, and the Lord Res, which are all subscribed by the said five Councilors, and already produced and read to the Judge; the Panel shall receive satisfaction of his defence, otherwise not.

It is replied for the Panel, that the former allegation is to answer that part of the ditty, bearing the heads thereof to be forged and vented by the Panel.

Answers, It is alleged by the Panel, that as to the falsification of the ditty, bearing, that all the articles and passages of proceeding therein mentioned, were maliciously invented and passed by the Panel, which is qualified by the Panel's own deposition and alleged confession against himself, and by the Panel's deposition fixing the Lord Res, and the Lord Res's deposition bearing himself thereof; the qualification asserts not the Panel in the particulars to be a Lesing-maker, and to have forged lies.

First, For the Panel's own deposition, it infers the full contrary, to wit, that the Lord Res was the Panel's informer in all; so that the Lord Res's deposition against the Panel, prepared in the ditty; that infers not forging of lies against the Panel, neither can it the Lord Res's deposition have any force against him; fifth, because the Lord Res's report, and the Panel's a witness against him for the King, and whose deposition cannot be re-

speared against the testimony, made against himself, for the King's Majesty; and in effect it but a denial, which can neither liberate himself, nor weaken the Panel's deposition. *Et testis in re propria dicitur testis non foretatoribus suo falsum esse, leg. 10. Cod. de iur. iur.* Item, The Lord Ros's deposition made by him, not being sworn, and so is null of the Law; *Quia testis non iuratus non potest esse fides factus, Leg. 10. Jurand. 1. non Cod. de iur. iur. 1. Leg. 10. Jurand. 1. non Cod. de iur. iur.*

Item, The Lord Ros's deposition is made in the presence of the Panel, and is so made *in publico, sed non de iuribus. Item, Although the Lord Ros were not party, he is not testis legalis: non potest.*

Item, The Lord Ros's depositions produced cannot be respected, because they are in the principal published by my Lord Ros, his relations, and doublets from the Council. *Et in criminalibus accusatio relationis est non operatur, Leg. 10. Jurand. 1. non Cod. de accusat. 1. de iur. iur.*

It is declared by the Lord Archbishop himself, now upon Panel, that the depositions which he made in England, and published with his hand, are not his, themselves, as they were deposed, according to the relation and proofs of information, which he received from the Lord Ros. The reason of this is, which is ingrossed in the several depositions, being allowed and admitted for reconciling of any apparent contradiction, without prejudice of what explanation is the first deposition he may justly make for that he declares, that the alleged copies of the Panel's sworn depositions, under the hand of the five Counsellors, to far as his memory can serve him, are not different in the substance of them, from the original. But that there is no more in his depositions, nor that unlike the published copies certainly, that he cannot say. And thus his Lordship goes according to his journey, and in reverence of his Majesty's Letter, and Noblemen's harsh expressions.

My Lord Ros now takes testimony of the Impugner's declaration in that part, made by him, that the copies of his depositions made by him, under the hand of the five Counsellors, were different in substance, according to the Panel's memory.

Thereafter, my Lord Archbishop and his Prolocutor, cryed that the Lord Ros's relation made upon the 18th of May, which is under the hand of the five Counsellors, might be read to him, because he made to found excepted thereupon.

To the which, it is answered by his Majesty's Advocates, that he cannot be compelled to produce the said relation, in respect no part of the qualification of the Dutty is founded thereupon. And yet according to his former answer, says, if the Panel will acknowledge the same, as it is under the hands of the five Counsellors, to make as great force as the principal, he is content, that the said relation be read; y^e of the which relation the tenor follows.

The tenor of such passage, as I Donald Lord Ros have heard or learned, whereby I am my self drawn Severely, or his Estate, beyond Sea and elsewhere, as I will be ready to take my Oath upon, and seal with my blood against all opposers. *Witness this 18th of May 1631.*

IN the month of April, 1630, or thereby, as my coming from Sweden, I heard Colonel Alexander Hamilton, Brother to the Earl of Hamilton, Sir James Hamilton, son to the said Earl, Sir James Hamilton of Kinross, Nephew to the said Earl, and one Hamilton the Lord of who were all Officers under the King of Sweden then. But before my coming there, they had all called themselves, not having served our year.

At this time the Lord of Boylis, Lady's, my Lieutenant-Colonel, being Bed-fellow and Comrade to Sir James Hamilton son to the Earl of Hamilton, keeping a chamber in James Hamilton's a Brother's House in London, Lyndsay did inform me, that the reason why the Hamiltons had called themselves, was because their Chief, the Marquis of Hamilton, was to be a Soldier, and they would follow his fortunes. I asked Lyndsay who had told him so much; he told me, Sir James Hamilton of Popham, Hamilton's Son; and Lyndsay told me withal, that all these Hamiltons, and Sir James Hamilton, another Son of Hamilton's, had devoted themselves of their Fortunes and Estates, some of them to their friends, but the Earl of Hamilton's children to their father.

Moreover, Lyndsay told me, that Sir James Hamilton, Hamilton's second Son, had told him, that Sir James Spence, now Lord Spence, had directed Mr. Robert Midlam with Letters into England; and that thereafter they did expect David Ramsey with the head Cavalry to the Lord Spence, as Ambassador from the Marquis of Hamilton: And all the Hamiltons did expect David Ramsey's coming.

After Lyndsay did inform me, that Sir James Hamilton did desire him to join with them, and that they would give him a Regiment, which he did accept, and did give my consent, which I did yield unto.

After one or twelve days after we did hear from Downard, that there was an Ambassador coming from England, who proves to be David Ramsey; who did give himself out, all the way as he came, to be an Ambassador; which to prove, he did stand in competition with his Majesty, our dear Sovereign's extraordinary Ambassador Sir Thomas Roe; both the said Sir Thomas and David Ramsey encountering in the Town of in Downard: yet David Ramsey would never do so much as visit the other Ambassador. Upon which oversight I did question David Ramsey, whose answer was, he did not desire to be seen of any man that would discover him, affirming to his Cousin Sir Robert Arbuthnot (as David Ramsey told me) that no haughty man could live at home. David Ramsey, Colonel Alexander Hamilton, and Sir James Hamilton, attending their dispatch from the King of Sweden as *Esquiers*, were forced to reside with me in my ship, for at this time we are on a ship-board.

And one night drinking some healths, amongst the rest, the Marquis's health coming by course, I asked Col. Alexander Hamilton, the Marquis's Christian name, he answered me, James, by the Grace of God; Sir James which, King of Scotland: therefore his health called under that name, told I did take exceptions, and did desire them to alter their title; Sir James Hamilton answered mine, saying, it should be so, and did laugh. I did desire them to drink it more covertly, thus, *The happy event of all God Intendeth; so David Ramsey said it should be so.*

That night, after the two Colonels Hamilton went to bed, David Ramsey and I being alone on the benches above, David Ramsey and I drinking and smoking a Pipe of Tobacco, told me many shames in the Court of England: laying the whole blame upon the Lord-Treasurer. He told me, that the Marquis had sent him with a Challenge to the Treasurer, and that Papery and a violence had ever come the most part from the Bishops; and that there was nothing but a far but debilitation and change of Religion, and that the poor soul the King was blinded to his ruin; and that he had been plain with the King, till he did give him to see; therefore he said, he had read himself from thence, since so honest man could live there, and with many false discourses he laboured to persuade me. My answer was, The Lord amend those evils, and so remedy his goodness. By God, Donald, (said he) I will be your own physician. We must help God to amend it. He told me, he had brought as much Gold with him, as would maintain him at the rate of six pound a day for three years, and did assure me that before that time would expire, that God would raise up some men to defend his Church, and likewise himself from slavery. What he held out, that his Majesty at his parting with him, told him, that he would do with him as King Henry IV. said to Cardinal, I will think on thee in absence as present.

I answered I did desire one favour of him, that he would tell me if the Marquis of Hamilton would come over; he said, he would tell me to-morrow. The next night after I did receive from one of the Marquis's coming over, and he said he would. I asked him what content my Lord Marquis had at Home? He said none; for the King had forced him to marry a Wife, and to acknowledge her, who he said was a very brack.

I asked him of what Religion my Lord Marquis was? He said, a good Protestant, and hence it was long, he would let the world see his aim was the defence of his Religion. I told him, it did avail an little to make the Gospel a fair pillage in Germany, if we lost it at home. He said, there were many honest men on our land, and that the Marquis would set his army to ground them, which was his only aim. I desired him to go no further on with me; for I would not desire more trust of it, but that I would spend my blood in my Lord Marquis's guard. Well, my Lord, I will go on further, for my Master's secret as Man shall see.

The third night, on board as on before, he told me, that Alexander Hamilton and Sir James were to go for England, and he to Holland, yet if I had any thing to do in England, that he would be willing to do me service. I told him I had a mind to kick the execution of Orders from the King my Master, if the Marquis would mediate with my Master, for a were good for my Lord to have a friend in that place for his ends. He said, By God it was to be thought upon; and he did desire me to give him leave to think upon it that night. On the morrow, he and Alexander Hamilton did desire me to write a general Letter to the Marquis, with the two Colonels Hamilton, with great assurances of true friendship from their Master, if I would continue constant in resolution; I did give them my Letter, and it was sent.

In the month of July, a day or two after the taking of Surin, I did encounter Mr. Melin who came from England: after Salomon, I did ask him what news? He answered me, matters are much worse; the King grows greater wile to Papists and Arminians than before; that Cottingham was gone so long, poor with Spain, that *Pendur* was dead; that the Marquis govern'd all, and was made Keeper of Windsor, and was made Knight of the Garter, and was to be Admiral of England. He did ask me where his Cousin David Ramsey was; I told him he was gone for Holland, he did assure, what he had done: I did answer, that all was ended to his mind, and that Alexander Hamilton was to get Powder, Arms, and Munition with him from Sweden, to the Marquis. At their news, he did throw his Cap to the ground, and set a happy, calling aloud, Good news! good news! I am a happy man! I am happy and made for ever! I thank God my five years pains is not for nothing; good my Lord Ros, is this true? Yes, said I, for I have one double at the Contract, I am engaged in the business to David Ramsey, and Alexander Hamilton and Sir James Hamilton, and by Writ to my Lord Hamilton. O my Lord, (said he) that was the work of God and not man, to inspire your Lordship to go with us!

At that time I called Lyndsay looking to find one of Midlam; who told Lyndsay, that six thousand trained Soldiers would do the turn with their own fidelity in the Country.

The next day at Colonel Loft's Tent, I encountered Midlam, whom I did call out, and he told me that King Charles was good and created for nothing, but for defolations and undoing of Kingdoms, Religion, and People. There was no way but to surround him within a Wall or Dungeon for ever. I asked what way we might do that? He said the way was easy; first, after the men were lifted in Scotland, that they might take one month's time to learn to handle their arms at Leith, whereby any suspicion they then might rise on the Castles of Edinburgh, Berwick, and Dunbar, on one night, and upon Berwick, and having the Castle of Edinburgh, the Town did not rise; then so easily Leith; thereafter into England per force. I answered, the Plot was good if it held.

He told me further, that he was writing a declaration of the Justness of the Marquis's quarrel, with the tyrannical and suffering of the Church under King James in his last days, and now working ground under his Son, with the House not clear to the Crown, followed of all. But I did demand who I thought would take our parts; he said, he did know none of the best Estates in Scotland that would love and the well us. As also that the body of England was with us, and some of the Nobility and well of the Treasurer. The next day there came news of the birth of the Prince. I did ask Midlam if that would cool the Marquis's intentions; he smiled and said, not of the King and Queen of Bohemia will give their Daughter to the Marquis, as they had promised. It is true, said I? He answered, I should be ere it were long. That night I did desire Lyndsay to drink with Midlam, which he did, and Henry Mulgrave an English Gentleman was with them. Lyndsay told me on the morrow, he did thank Midlam to be the worst Secretary in the world, for he did reveal this last night all he did think. I do not remember the night's discourse; but do trust to Midlam's relation.

A week after, I did speak with Midlam again in Loft's tent, so he did desire me to walk forth, and told me he had been with Secretary Sedler, to whom

heard or preside, that any Subject being necessitated by the Law to reveal what may concern the King's Majesty or the State, and revealing the same to his Informer therein, and constantly abiding therein, and willing to maintain the same upon any Testimony of Truth or Conscience; that the Revealer, upon the Party's demand, should be called in question of his Life, as the Deceiver and Forger, or the false to work any way against the Revealer; and which if it should now take place, and begin to be a preparative against the Panel; it were to give way and occasion to all treasonable Exploits, and that finally, because none would or durst reveal the same.

Next, as for the List of Names of the principal Agent and Plotters aspergished to the Lord-Treasurer the 16th of May, affirmed to be forged and invented by the Panel himself without any Warrant from my Lord Roe, conform to the Panel's deposition upon the 2. th and 24th days of *June* last, more of the Panel's depositions inconnu, in the which the Discovery comes, bear any such Confession or Forgery by the Panel; but bears especially the Lord Roe's relation to him in both the Panel's depositions, which is sufficient for an Informer.

It is added by the Panel, That whereas it is alleged by my Lord Advocate, that the Panel could never achieve any true Cause or Knowledge in the Lord's participation with the Lord Marquis's named private Agent, and the said Earls of *Heddergh, Roxburgh, and Roxburgh*, Plotters; because the Lord Advocate affirms, that the relation was given upon the 18th day, and the List presented to the Treasurer the 16th day, and so the Panel could have no just reason why these contained in the List, were not contained in the relation, which was given before. The Panel affirms, that hereafter the List was given in before, the reason thereof is this: The Lord Advocate making mention of his relation, delinquencies not be treated a relation by Word, and another by Writ; but it is, that my Lord Roe made relation to the Panel upon the 13th of May of the whole things contained in the Relation upon the 18th of May, as appears evidently by the Panel's 1st and 2d Depositions, and upon the 14th and 15th days my Lord

Coris Johannis S. D. N. Regis tunc in pratoribus burgis Edinburgis, secundo die mensis Decembris, Anno Dom. Millesimo, Sexcentesimo, Tricesimo primo, per Honorabilem et Dilectum Virum, Magistrum, Alexandrum Colville de Blair, et Jacobum Robertson, Advocatos, Testificantes deponat nobilis et potentis Comitis Willielmum Comitem de Strathmore, et Monachum, Dom. Grahame, Killycride, et Kynpont, prefatus forent Comitis S. D. N. Regis, tunc sui Regis Scotie, ubi testis vocatus et Curia legitime affirmata.

Intra
JAMES Lord Usher, deposed of the Crimes foretold, contained in his Dittay.

Sir Thomas Hope of Craighall, Knight and Baronet; his Majesty's Advocate for his Highness's Entails.

Prolocutors in Defence.

Mr. Robert Nares.
Mr. Alexander Purkin,
Gilbert Milles, } Advocates.

The said James Lord Usher by himself repeats the former first allegations, word by word, as it stands, and this is to me, that he can so say by in *mele fide*: That the Grounds of his representation preceded not his written representation he *argues*, as it is alleged, because the Lord Roe had omitted in his relation to make mention thereof; whereas my Lord Roe's facts cannot make the Panel guilty simply; neither can his conditions take away the strength of the Panel's Arguments of his innocence: For it was the Panel's part to follow him, and not to lead him; to reveal allegations, and not to induce allegations to him. Neither was the Panel under any just cause of fear that his omission could endanger him in the point; because he was conscious to himself, that my Lord Roe had told him the grounds of his representation before, viz. upon the 14th and 15th days of May, by verbal relation thereof upon the said days.

The Panel likewise knew that there was a forced relation wrote of sundry other particulars to be made by my Lord Roe subsequent; among the which he knew the Grounds of his preceding verbal relation of his representation was to be justified and cleared. So by their relations the Lord Roe's omission of the grounds of the Panel's representation out of his frigid relation, as *tempore*, can give no just ground to mislead or infringe the truth of the Panel's assertion. That my Lord Roe by verbal relation preceding both the representation and that written relation, had told him, that the Earls of *Heddergh and Roxburgh* were upon the Council and secret of the business informed against the Lord Marquis. The same last Argument holds good likewise for my Lord *Roxburgh*; and as to the representation in general, the Panel declares, That it was written and given in upon a Discourse of my Lord Treasurer's inquiry for the Friendship of the Marquis in *Sardinia* by Blood or Interest, whereby conjecture might be made of his power supplanting of his Friends had joined to him. And this is clear by my Lord Roe's relation, in naming it a representation, and not an information, accusation, nor relation. The general strain of the Writ likewise evidences, that there was no intent by that Writ to mislead in any thing concerning the Lord Marquis or those three Noblemen.

Because the representation containing one fifth and a half of paper, that which concerns these Noblemen originally will scarce take up two long lines. Whereby it is manifest, that the intent of the Panel was more to illustrate other things, viz. The alliance and interest in blood of his Noblemen to these first four, than any intent of either delating or inferring any crime or fact against these first four; but to distinguish by way of separation between the one and the other. And also 'tis to be said, the Panel asserts, that the mentioning of these Noblemen preceding the first four, be taken in no evil sense, but as a writ with no meaning to that effect, while the Panel, thinks Christian Charity will not presume, his Wife's Son, his Children's Brother, the pnp of his providence under God, and of his Wife and Children, the Earl of *Cass* being one, and the Marquis of *Ilchester* his Sister by his Mother, his good Dame, Brother's Son, who saved the Panel's Life, and for whom the Panel has ventur'd his life, or any of his; can it be presumed that the Impetunel would have intended malice to that Male, wherein these two helped to make up the confusion? Neither doth it appear by any Incent, that any thing was meant by the representation, but an explanation of Noblemen's power to *Sardinia*.

Voc. VII.

Roe renewed the discourse concerning my Lord *Roxburgh*, and explains himself in these particulars concerning the Earls of *Heddergh and Roxburgh*, named therein being upon the secret and Council of the Marquis's affairs. Then it was represented upon the 14th and 15th days, the Lord Roe and the Panel being both at *Graham's*, returned upon Monday morning, being the 16th day, to *Leasgow*, at which time the Panel went into the Lord-Treasurer, and there fell in discourse with the Treasurer on the business concerning the Marquis's Power as *Sardinia*, and his address with the Panel, and so drew his Lordship he would let him know a very great; and so came forward to the Panel's own House, and wrote the Representation, and delivered the same to the Lord-Treasurer, which was done upon the 16th day, being Monday. And where my Lord Advocate alleges, that there could be no ground for this representation before the giving in thereof from my Lord Roe's written relation, because the representation preceded it in so many, and the Plotters and the Panel, and the relation, which therefore followed upon the 16th of May, answers the verbal relation concerning the Plotters made by the Lord Roe; and so the Panel preceded the frigid relation given in to the Treasurer; and so the representation both, because done upon the 14th and 15th days of May, the representation being upon the 16th, and the written relation upon the 16th. Neither was it needful to the Lord Roe to make that relation in this paper, which he had made to the Panel before by word, like as there are sundry other things in the Panel's depositions, which are not to be done in that written relation. First, because in all the written relation, no mention is made of my Lord *Roxburgh*, or any thing proceeding from him, it is of nothing from him, why then of the Grounds of the Panel's representation, which was had from my Lord of *Roxburgh*.

The Justice commences all further discourses, and referring to this manner (by reason of the Interest of the Night) the Motion made at the 13th of December, and orders the Panel to be returned to Ward, to remain therein in the mean time; the Period also was not *apud Adm* to the more, all Persons under the pain of a theutical Mark.

Neither let this be thought any new invention, or new explanation; because it is mentioned before that alleged by my Lord Advocate in the same, and acknowledged thereby; neither can it be presumed, that these words, prime Agent and Plotters, can import any information of any thing, because all direct allegations must be in accusation, and must have some evidence to join the Subject and the Attributes together. Which is a confusion and contradiction of it want nomination; if no nomination, no affirmation, nor lie. But so it is, the Words prime Agent have no Primaries, nor the word Plotters imply has no Primaries between them as Attributes, and the person named as the Subject, and therefore no nomination, and affirmation, nor lie. And where my Lord Advocate in his Dittay affirms, that it is manifest by the Panel's own deposition, the truth of the Dittay; and in the dispute yesterday, produces a particular, that the Panel should have deposed, that the Lord Roe said, that he had no certainty of the business, this can so ways fortify the affirmation of the Dittay. Because the Panel's deposition lays out that the Lord Roe had certainty, but whether he had certainty or no, the words which the Panel's alleged was told to him by the Lord Roe; for the Panel's deposition demands not upon a *scientia certa*, but *relativa veris*, that he spoke it to the Panel, as he has deposed. As to the third Article of the Dittay, against the Panel's proceeding and speeches to his Majesty the 23d of May, to-wit, *Sir, you know the business, but know not the time, Sir, either day or day*; this Article enforces not upon the Panel lying to his Majesty. For the Lord Roe, and the Panel upon his information, both had acquainted his Majesty with the business, so that the Panel might truly say, *Sir, you know the business*; and it is as true, that the Panel knew not the time. As to the verbal *et sic*, that is a usual phrase of speech, and imports, *Sir, for your favour*, till these informations had been clear'd, and is of itself a faithful advice to his Majesty, and not a malicious Counsel, and advice for to prevent the King's Majesty's harm, and not to draw harm upon any other: like as the words themselves enforce not against the Panel, as the Dittay bears; but does very well admit a harmless *veris*, and should be interpret to the best meaning the words may admit. *Quia de jure est in dubio et obsequi potest maxime et loquax sequitur.* *Legis non est de Regali jure et de obsequiis antichorum maxime forenti spontanea est que sui sui possunt.* *Legis hoc videtur; et quoniam idem foris dicit forentis expresse, et persequitur sciendum est, quod est idem foris est, dedit autem eperum eperum rursus dicit de obsequiis to-wit, the revealing of particulars, he heard against the King and State. *Deponit in parabolis equis forenti forenti interpretationem est.* And therefore the Panel's speaking and whispering with the King's Majesty to see to his own safety, should be referred to his own cause, to-wit, the Panel's most burdensome duty and tender love to the King's Majesty, his welfare, and to the State of the Kingdom, fearing their faith, upon that relation that had been made to him. And also leaving his own faith, if that he should have been found any ways treacher or dark in not telling with his Majesty to prevent their evils and treasonable plots, in often related and repeated to him; and while the Panel then feared to have been Treason, and to have come beyond Sea. And should not be attributed, as the Dittay bears, to any malicious Counsel, or Purpose of the Panel, for inflicting, or turning up of his Majesty, to any sudden and violent assault against the Marquis's life and honour, or the Panel's suffered before God, to have been his true meaning. Like as he in his Examination in June, upon the 23th thereof, deposed, that upon Sunday Morning, which was that day he delivered to the King's Majesty with these former words, was, that he should go to London for more safety, and that the Panel had no other end of speaking of the words foretold.*

Now, The words *et sic*, can be no Lending, because they are not words of affirmation, but of counsel or advice.

As to the Paper of Names, which the Dittay affirms, the Panel has confessed to be made by himself, and that the Lord Roe was not privy to the

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the making thereof on delivery of the same to the Lord-Treasurer; it is answered, these words made by yourself, is written with your own hand, so purposed to be by the Deputy itself, so that article anent the fill of names delivered to the Treasurer. To the writing of the whole paper with Pen and Ink, and to the instant delivery thereof, by the Panel to the said Lord-Treasurer, the Lord *Roe* was not privy, he not being present with the Panel at that time, but does no ways enforce, that the names and manner of that written paper was forged and devised by the Panel. But by the contrary, the Panel by his deposition, made the 20th of June, which bears, that after the Lord *Roe* had revealed to him the particulars, he desired the Panel to acquaint his Majesty, or the Lord-Treasurer therewith; leaving to the Panel his own free-will, whether he should acquaint him therewith by word or writ. *Et sic avante spectatis qd. scilicet prefatus*, who is no ways contrary to himself as his depositions; but whilst both faults in their own true facts.

As to the Article bearing the Panel in his Examination, being inquired for what cause he did name the Lord Marquis to be prime Agent; and that the Panel affirmed, that he could assign no true reason nor warrant from the Lord *Roe*; it is answered, that the Panel is not obliged to give any true cause. But that the Lord *Roe*'s relation to him *quasi pater* is a sufficient Warrant.

Secondly, The Panel's deposition upon the 24th of June bears the contrary of the said Article, and assigns the cause to be, that the Lord *Roe* had told him, that the Lord Marquis's followers had laid, the intent of the Marquis's Levies was to invade *Swedon* or *England*. As also the Panel's Examination upon the 20th of June purports, that upon the 13th of May, the Lord *Roe* came to the Panel's chamber, and there putting the Panel in mind of their former speeches, told the Panel that the people of the Marquis of *Holland's* Levies, as divers of his Commanders and Followers had informed him, was, that either they should not go out of *England* or *Scotland*, or if they did, they should return to *England* or *Scotland*, and furnish the King's *Ships* in *Swedon*, viz. the Gallies of *Switzerland*, *Strawing* and *Damier*, and fortify themselves in *Leith*, under the pretence of training, and should take *Swedon*, and so march forward into *England*; and that the intention so to do, was, as the Lord *Roe* said, that he was so informed, and as the deposition in itself bears.

Thirdly, The Lord *Roe*'s written relations of divers persons discourses to the same purpose, of the which he was informed by themselves; whilst written relations, although they be written on the 18th of May last, yet are of matters and purposes that passed long before, and related of before to the Panel by word, by the said Lord *Roe*.

Fourthly, The Lord *Roe* at his first coming to his Majesty in this business, in the Panel's hearing, being asked of the King's Majesty, why he had not told his Majesty before, that the Lord *Roe* had informed, because it seemed to him the Marquis of *Holland*, who was so near to his Majesty; he was afraid to communicate the same to his Majesty immediately, as the said Lord *Roe*'s deposition taken upon the 21st of June purports.

Fifthly, The Lord *Roe*'s deposition made upon the 21st of June, wherein he deposes, that he said he should bring as honest a man as himself, that would tell the Lord Marquis's face more so the Lord *Roe* would do; so all that the Panel speaks herein, was by Information, and so therein is no Forger, nor maker of *Leavings*.

Sixthly, The Panel's deposition, taken upon the 20th of June, bearing that the Panel told the Lord-Treasurer, That the Lord *Roe* told him, he had yet more, and would say so much, as the Lord Marquis would not have a face to deny; which the Lord *Roe* then professes affirmed, is as much as the Lord-Treasurer said, then is the business at an end, there needs no more writing. And this Article before repeated, the Panel affirms, that the Lord-Treasurer of *England* heard these words, and did affirm the same before the King's Majesty and Council of *England*, upon the peril of the Panel's head.

Item, As to the Article bearing the Lord *Roe*'s declaration upon the 21st of June, that he knows nothing against the person of the Lord Marquis, but that the Marquis was as good a Subject as any the King had; it is answered thereto by the Panel, that his deposition and representation depends not upon the Lord *Roe*'s knowledge, but upon his relation made to the Panel. And that declaration of the Lord *Roe*'s takes not away the relation made by him to the Panel, and doth not infer making and forging of *Leavings* in the Panel without warrant from him; this specially being considered, for weakening and infirming of the Lord *Roe*'s depositions to the Panel's depositions, that my Lord *Roe* having said these words in presence of the Treasurer of *England*, and justified by the Lord-Treasurer of *England*, in presence of his Majesty and Council of *England*, that the Lord *Roe* would say so much, as the Marquis should not have the face to deny it; and now he says, that he knows nothing against the Marquis's person: which are contradictory to himself, and renders himself not sufficient to improve the Panel's depositions.

Item, Here the Panel, in this place, repeats the objections of the nullities, made against the Lord *Roe*'s depositions, so far as the same may be prejudicial to the Panel.

Item, As to the Article, bearing that the Panel being asked, by what warrant, he called the three Earls *Pletores*; and that he answered, that the Lord *Roe* had told him, that the Lord *Seymour* had affirmed so him, that the Earls of *Arden* and *Roxburgh* were acquainted with the particulars and secrets of that business; declaring therewith, that the Lord *Roe* had affirmed the same to him, before he gave in the paper of representation to my Lord-Treasurer. Albeit the Lord *Roe*, by his deposition the 24th of June, declared, that the first time the Lord *Seymour* had speech with him, anent the said two Earls, and their being given to the Marquis's business, was upon the *Monday* after the Marquis's coming out of *Swedon*, and not before; and so after the representation given in to the Treasurer upon the 16th of May, containing the names of the *Pletores* and *Adhors*; at which time the Panel could not truly affirm any information from my Lord *Roe*; to the which it is answered by the Panel, that he, by his deposition made the 24th of June, he declares, that all the understanding the Panel had in the business, came to him from the Lord *Roe*, also by his deposition the 20th of June.

Item, The Lord *Roe*'s granting of the speech himself, anent the two Earls, makes presumption against the said Lord *Roe*, likewise for the time,

Quia dicitur factis prepositis et rebus si non suis decesserint; neither is it probable nor ordinary, that there should be that signification of spirit in the Panel, as to prove what the Lord *Roe* should make to him so long before, *Quia non prepositis, sed prepositis, per se est, quod monere est, fundam notari ante; ita dicitur prepositis*. And to this article enforces not against the Panel, that he is maker and forger, because the Lord *Roe* deposes not simply, but the name of the Panel's depositions therewith, which is no *Leaving*.

Item, The Panel in his Examination upon the 20th of June, in the course and order of the depositions thereof, which, at the order of time, before the article anent the representation of the list of names to the Lord-Treasurer; he deposes, that the Lord *Roe* had told him, that he had spoken with the Lord *Seymour*, and had understood that from him; which general has no other meaning but that whilst he particularly, by the said Lord *Roe*'s Examination upon the 24th of June, as that article thereof, bearing that the Lord *Roe* did affirm to the Panel, that he heard the aforesaid report of the two Earls, before the Panel made or deliver'd the paper of representation.

Item, The Lord *Roe*'s deposition upon the 24th of June, bears not the Lord *Roe* to deny, that he did affirm to the Panel, that he heard the report of the said two Earls from the Lord *Seymour*, before the Panel made or deliver'd the paper of representation to the Treasurer. But purports, that the first time that the Lord *Seymour* had any speech with the Lord *Roe*, touching the two Earls, their being privy to the particulars and secrets of the Lord *Holland's* business, was upon *Monday* after the Marquis's coming from *Swedon*. And so that the Lord *Seymour* had not spoken with the Lord *Roe* therewith at that time; which is nothing to the Panel, whether the Lord *Seymour* had spoken with the Lord *Roe* or not. But denies not the aforesaid report of the two Earls made by the Lord *Roe* to the Panel, which the Lord *Roe* did then affirm, that he had the same by information of the Lord *Seymour*; neither is the Panel obliged to make good the Lord *Roe*'s warrant herein, that the Lord *Roe* had the same by information of the Lord *Seymour*; but the question is, if the Panel heard the same from the Lord *Roe*, before the giving in of the representation to the Treasurer. Whilst the Panel affirms and shides at, conform to his depositions, made upon the 20th and 24th of June, so said is.

Item, The Panel here also repeats all the objections against the Lord *Roe*'s depositions, *et supra*.

Item, Anent the Article, bearing, the Lord *Roe* to have told the Panel, that he could not guess who else should have been in the plot, unless it were the Lord *Bowling*; and that the Lord *Roe*, who by his deposition upon the 24th of June deposes, that the Panel, and not he, did name the Earl of *Bowling*, as one would take arms, as related to the Marquis: It is answered thereto, *et supra*, that the Panel by his deposition has declared, that all the understanding he had in the business, came to him from the Lord *Roe*; as the Panel's Examination bears, and which he shides at as most true.

Item, The Panel's deposition upon the 24th of June, bearing the Lord *Roe* told him, anent the Earl of *Bowling*, is not simply, but *an easo*, bearing the Lord *Roe*'s reason, wherefore he named him; and while reason in substance is granted by the Lord *Roe*, although with force diversity of words, at the last not denied in his Examination upon the 24th of June. And therefore, the said Lord *Roe*'s deposition affirming the reason, but denying the naming the said Lord *Bowling*, ought not to be credited in his depositions; but the Lord *Roe*'s affirming of the reason, induces upon him the naming of the said Earl. *Quia ratio easo dicitur prepositis et rebus si non suis decesserint*.

Item, The Lord *Roe*'s speeches to the Panel, anent the Lord *Bowling*, though considered, necessitate the Panel to the representation, and revealing of the same to his Majesty; especially being the Lord *Roe* strengtheneth the same with reason wherefore he is to prove, to wit, that he heard the Lord *Bowling* speak terrible and presumptuous words against the King's Majesty, at his own table in *Holland*; as the Panel's deposition upon the 24th of June purports, and which is granted by the Lord *Roe* himself in substance, at the least not denied.

Item, The Panel repeats here again all his objections against the Lord *Roe*'s depositions; and alleges that it was never heard nor proved, that a Subject being necessitate by the Law, to reveal what may concern the King or State, and revealing the same with his informer therein, and constantly abiding thereto, and willing to maintain the same by any trial or torture, that the revealer, upon the party's denial, should be called in question of his life, or the same any ways work against the revealer. And whilst it is should now take place, and begin a preparative against the Panel, the same was to give way and occasion to all treasonable exploits; and that securely, because none would or durst deny the same.

And further, where it is affirmed by the *Dixey*, that in the last presented by the Panel to the Lord-Treasurer, there is delivered the Earls of *Haddington*, *Roxburgh* and *Arden* to be *Pletores*, the Panel had ground to make the relation, so ways affirming any thing positive, because in the Panel's deposition made the 24th of June, being examined and asked why in the aforesaid paper, he makes the said Earls *Pletores*.

It is answered in the deposition, that the Lord *Roe* had told the Panel, he could not guess who else should be in the Plot, unless it were the Earl of *Bowling*; which word *Pletores*, having had relation to the Earl's business, must also have relation to the other two Earls, seeing they were spoken of all at one time.

It is answered by his Majesty's Advocate, first, to the first Article of the fifth exception, anent the purging of the Panel's speech to his Majesty, upon the 17th of May: By this word that is subjoined, as the Panel is informed, whilst the premises for the Panel will have to be repeated in all the subsequent passages concerning the business; first, that this word, *et sic* is referred, cannot purge him, because he received no positive information from the Lord *Roe* against the Marquis, nor any warrant to call him Party, Prime Agent, and to affirm to his Majesty the business was known; to which last he subjects his Council, very dangerous for the life and estate of the Marquis; whereas there are reasons to infer against the Panel, an exceeding of the relation made to him by the Lord *Roe*, and the exceeding of it, with the Peril of the Nobleman,

man, his life and estate; these being neither word nor passage in the Lord Res's written relation, which may either warrant those speeches, or infer them by consequence. And in matters of this high strain, as of Treason, no illation by consequence is permissible, but upon the peril of him that infers. For in all the written relation there is not a direct word spoken against the Marquis, neither by David Rainsford, nor by Mr. Robert Melbourn; but altogether false made and frantically uttered by Melbourn upon his own imagination, or with leave to him, for the difference of the illation, by expanding the manner how such an enterprise, according to his foolish opinion, might be performed; but not one word or syllable, that Melbourn heard in from the Lord Marquis, or from any who declared they heard the Marquis speak it. And as to David Rainsford, the worst word that is in his relation, is against the Marquis's misgovernment, and all the Marquis's aim was to save his Levy for the protection of Religion; which aim and intention the Lord Res, after his coming to England, clearly understood by the Lord Marquis himself, who employed him to be a Colonel in his company, and gave him this assurance, that he that would hazard with him in that glorious business for assistance of the King of Sweden, should make use of him, with the hazard of his fortune and estate; and none of these passages were contained in the speech given by the Panel to his Majesty; That it was a Treason, an odious Treason, and the Lord Marquis Party, as the Panel was informed, and that it was the likeliest Treason that ever was intended, and that the Panel was sorry that any Scoundrel should have fallen into it, it being a frame to the whole Nation: which is a positive affirmation, not as the Panel was informed, but as he himself did infer, upon the relation made to him by my Lord Res, who would give the Panel no assurance he had any certain ground, which is manifest by the Panel's deposition upon the 20th of June last. And as to the relation, albeit it is worded with these words (as he is informed) could give the Panel no warrant to express these positive speeches to his Majesty, upon the 17th of May, for he is to be considered as prime Agent, and known business, with the subsequent counsel. First, Because they are positively spoken without addition, (as he is informed), and where the proposer for the Panel says that these words as he is informed, must be repeated in all subsequent passages, that has some probability, in *non continetur ad id, non una per se.* But here the Acts are diverse, the dates diverse, the expression of willing identity, the ill being upon the 17th of May, the speech with the King, as he is informed, upon the 17th of May; and the speech of the known business with the Council being upon the 22d of May; and these three distinct arguments evidently charge the Panel with the excess of his duty. For he did all his duty that was required of him, as a faithful subject, when upon the 17th of May he presented his representations, he came to the Lord-Treasurer and told him, that he had a business to reveal concerning his Majesty, and whilst (as he said) concerned the Marquis of Hamilton's affairs, and that he had the name of the Lord Res after the whilst, he had no necessity as a loyal subject, to go further. And yet he goes on to the expression of all these speeches, and adds thereto his dangerous Counsel to his Majesty; which can have no respect to the Lord Res's relation, nor to the Panel's duty in revealing of it. And where the Panel would perch his giving in of the lifts first, because it is not an associative speech, *per se non associatur*, this is contrary to the representation, bearing the occasion is the Marquis of Hamilton as prime Agent; and then would be repeated in the subsequent word Plotters; the first being the Earl's *ad Mirum, Rainsford, and P. Lewis Plotters.* Whilst is a sentence that has a clear signification, affirming the attribute Plotters upon these three, in an evident and clear signification, as the clause subsequent, which states the whole Noblemen adherent by blood.

And where it is alleged, that albeit the Panel named the Lord Marquis prime Agent, he did alluringly upon intention to distinguish the Marquis, and the other three Earls from their of their Adherents in blood; and urges that this intention should be charitably expounded:

It is answered, that *cum ex dictis non potest purgari bene intentionem.* And if the points contained in the Dittay, whereupon the Panel is accused, be in their own nature criminal, they cannot be purged by a good intention, nor yet by a pretension affecting the time of the doing it. But the intention, with the fact and deed, are both alike judged odious, and punishable. *Et nequeque profectus bene intentionis nisi probatur, ad abolendum crimen;* as it is intimated, by *Jus. Clarus de injuriis, in mentione factis injuriis.* This intance being adduced, whilst by the opinions of all the Doctors cannot excuse the committers of the injury, and much less in this Dittay; which contains *injuria capitalis*, striking upon the life and fame of the Noblemen. *Nemque defensor, jactans aliquem maleficio quoniam in manu ipsius non sit scilicet indicat, ut nota et constat perferre testem, quod est favorendum evincere;* and charity can have no place here, without the offence of Justice, which craves the due punishment from the offender. And where it is alleged, that the Panel, not to warrant, both to name the Marquis prime Agent, and the Earls Plotters, by a verbal relation from the Lord Res, there can be no refusal but a verbal relation, except it were given to the Judge, especially in a matter *non obsecranda.* Neither can the Panel alledge to a verbal relation, to colour his behaviour therewith; because the Panel affirms, that their verbal relations were made upon the 14th and 15th of May; whilst precedes the relation exhibited in Writ, upon the 17th of May. In the whilst relation there is not a syllable of the three Earls as Plotters, albeit in the relation there is mention made of the speeches spoken by the Earl of Rainsford to the Lord Res. And the Panel having given in his list upon the 16th of May, and knowing the peril of adding or purging to that, whilst was related to him in a manner of this importance; which should have been as seriously handled, as the life, honour and safety of our precious Sovereign or in the care of the law; and the case to shew the branding of Noblemen with the odious appellation of his Treason, did require of him, on the other part; And cannot pretend a colour of excuse by the omission of the names of the said three Earls in the relation given in upon the 16th of May; especially for the relation in effect was his own deed, *h. e.* for he brought the Lord Res to his Majesty, to make the relation. And the Lord Res, in his relation to his Majesty spoke never a word of the three Earls; nor yet the Panel in his relation to the King's Majesty, and the Lord-Trea-

surer, spoke not a syllable thereof; whilst is clear by the Panel's deposition upon the 20th of June, which bears his relation, made in presence of the Councilors his Examiners; wherein is no word of the three Earls. And likewise by the Examination of the Lord Res upon the 21st of June, which is such like; and when his Majesty had remitted the Panel and the Lord Res to the Treasurer, who directed them to draw up the Lord Res's relation in Writ; the Panel confessed, that he and the Lord Res went home, and sat up all night, and that the Panel, after the Lord Res had put the relation in writ, did write the same over with his own hand, out of the Lord Res's papers. And yet not a word of the relation of the three Earls; which would not have been omitted, if it had been truly done. And where the Panel protests, that the omission thereof was in effect that the relation contains all that which was related by the Lord Res upon the 13th of May; but not that which was upon 14th and 15th of May, which was learned of the Lord Treasurer, that allegiance hath no warrant of the relation, nor yet any appearance at all; because in the Panel's Examination upon the 20th of June, the Panel doth confess that which was done upon the 14th and 15th of May; but not one word of the Earls, either in their first Examination he makes mention, that the Lord Res had in relation with the Lord Treasurer, and likewise in the Examination of David Lord Res upon the 21st of June, he says also the Panel's own deposition, *scilicet*, that the P. and two days after the relation, which behaved to be upon the 20th of May (relation being upon the 18th), the Panel brought the Lord Res to the Treasurer, and caused him to subscribe his relation; at which time the Panel told the Lord Treasurer, that the Lord Res had more to say; whereupon the Lord Res being asked what it was, and wherefore retained, the Lord Res answered, that he had spoken with the Lord Treasurer, and had ready particulars from him, which he did not tell to the Lord Treasurer in particular, but generally allowed to him he would say more. But one or two days after, the Lord Res went to the Earl of Seferby, and then told the same, first to the Panel. And that the Panel, upon the Sunday of the Morning (which was the day of the Marquis's returning from Scotland) he had told the Lord Treasurer these particulars, spoken by the Lord Treasurer, and therewith also of the Marquis's return; whereby it is clear, that as nothing is contained in the relation touching the three Earls, neither in the verbal relation to his Majesty and Lord Treasurer, nor in the subscribed relation; for the speeches therewith spoken by the Lord Res to the Panel, was not till eight days after giving in of the list.

And where it is alleged by the Panel, that as the Lord Res's list cannot burden him, for less his omission, it is answered, first, it must hard him, because he caused him to be his Author; and wherein he is not his Author himself, he must be presumed to be his Author. And next, because the relation in effect is the Panel's own deed, and said to be to the purgation of the speeches, that the business is known, *scilicet*, either *de re*, that the same must be interpreted *judicium communis ad seipsum*, and so mean as much as, for to your own safety; it is answered, that they must be taken properly, and not improperly, and must be related by the preceding speeches of the party and prime Agent; so if the Panel had said to any person, this may flow your father, *de re*, in the which case, the words would not be expounded fairly, but *nequeque*; and where it is alleged *quod in dictis beneficiis fortis dicit interpretari*, this rule of law has only place in *contradictio*, *sed non in criminatione*, *premissa circumstantia*, as that is. But it is urged, *quod in factis hactenus*; but it is answered, in matters of this kind, it is not to be regarded of the Panel, but to reveal (which was done before); and *hactenus* is done after the revealing, that might tend to the hurt of the reputation of the Noblemen, or touch them in their life and estate, was altogether unlawful and capital; and the unlawfulness is manifest, by the labelling of these pernicious Councils, *de re*, *de*; which is not of the nature of a relation, but of the nature of the indignation, of a foreign Prince to a dangerous act, tending to the destruction of the life and honour of them, against whom the Council is given; and by their answers, the whole odiousness made against the particulars of the list are solved. To the which is added, the Lord Res's declaration by Oath, treating the Marquis, his Majesty's Letter of the 10th of June, sent down to the Council, declaring the Lord Marquis, and the said three Earls of *Hodgkinson, Rainsford* and *Shugborough* (so be in his Majesty known to be) as good and faithful Subjects as any within his Majesty's Kingdoms; and declaring his Majesty's resolution, to have those who have given false information against them, to be punished. After the which, did follow his Majesty's Letter of the date of the 24th of September, for trying and punishing the Panel, upon the particulars given forth by him against the Noblemen; wherein the Panel, notwithstanding of all his purgations, can have no just warrant against the Marquis, specially in the two last points of prime Agent, and known business; nor pretend against the Earls of *Hodgkinson* and *Rainsford*; but (by the Panel's confession) least of all against the Earl of *Shugborough*, against whom he had nothing but a guess by his own confession, against what he makes him Plotter.

It is replied by Mr. Robert Nairne for the Panel, that this Dittay consists upon their deeds done and committed by the Panel, together with his intensions in the doing of them. As to the Panel's intensions, that it was not of purpose of making any Leading, against the Act of Parliament, but to the revealing of an alleged Treason against his Majesty; the revealing whereof was necessary by that addition adjoint to the last Act of Parliament libelled; for obedience of the whilst Act, the Panel did whatever was done in this business by him, and that the first part of the Dittay is not relevant against the Panel, to infer the punishments libelled against him, is clear, by retorting of the argument after this manner: A deed commanded by the Act of Parliament, wherein infer a punishment by the same Act of Parliament, it is that, the first deed tends not to the assumption of this Dittay was commanded by the Act of Parliament, imposing a necessity to all bearers of treasonful speeches against the King or State to reveal the same: Ergo, he did the same lawfully. Whence it is alleged in the Dittay, that by and after the information which the Panel had by relation, he has exceeded in the particulars expressed in the Dittay. And first, in the first particular, at the doing and speaking whereof by and after the anterior information, which the Panel had received, the Lord Res his Author was present: who being inquired of by

And where my Lord Advocate charges against the Panel's defining of the 10th Article, as intended by the Panel, that the full Author and be the Defamer, and not the reveller; the whole matter of the pretended Defamation, being original and first the Lord Ræ's great deposition, upon which, and not the Acts of the Panel; as it is evident, by the Panel's own admission, the Lord Ræ's first deposition the 21st of May, where the full Lord Ræ doth acknowledge the commission of the Panel, taken the 10th of June, to be true in all points, so far as the same concern the knowledge, words and acts of the said Lord Ræ; upon the exposure on that following. By which explanation, and notwithstanding this, there is substance enough in th. Panel's deposition, to prove that the Lord Ræ, and not the Panel, was Author to the whole matter of the pretended defamation. And whereas my Lord Advocate would in his reply seem to question the verbal relations, flowing from the Lord Ræ to the Panel; to this the Panel opposes his own deposition, and the full article of my Lord Ræ's examination formerly cited, wherein the Lord Ræ ratifies the Panel's verbal assertions: if he ratifies these, they will be in *revera natura*, if they be, my Lord Advocate's assertions are not relevant. And where my Lord Advocate alleges the flowing relation of the Lord Ræ's verbal relation, out of his examination as well, as to the Lord-Treasurer; the Panel repeats his exception to the statement of before. And to all my Lord Advocate's difficulties in last effect, concerning one side of paper, the Panel opposes his full assertion, and his depositions, and the Lord Ræ's relations, and his examination agreeing thereto. And whereas my Lord Advocate would bind the Panel in answer for the Lord Ræ's omission, because the Lord Ræ is his Author; the Panel brings forth behind at the time of his exception, can hardly find means to be persuaded that it came from his Majesty's Advocate, and opposes and repeats the Panel's exception herein. And where my Lord Advocate, upon these words, ye know the history, and not the time (*de re*), says, that these words should have a proper interpretation, which is, to be a Counsel given by the Panel, for subversion of the Marquis's honour and estate; the Panel answers thereto, that he adheres to his exception already alleged; and further adds, that the Lord Ræ said to the Panel that Sunday morning, that the Lord Sneykers had said to the Lord Ræ, their purpose was to take the King, the Queen, and the Prince; and so the information being given to the Panel, furnished to the Panel great cause of fear, and his fear the reason of the expression of these words, of advising the King to prevent his danger; as the Panel had formerly advised my Lord-Treasurer of England, to advise his Majesty to retire to *Whitchell* near *Greenwich*, as to a place of more safety. And this is clear, by the Panel's deposition the 21st of June, relating by the Lord Ræ in the first Article to his Examination the 21st of June.

And where my Lord Advocate alleges, that the Lord Ræ and his Majesty's Letter sent the Marquis of Hamilton, and the other Noblemen, by the Lord Ræ's Oath.

It is answered thereto by the Panel, that the Panel does not charge them; he only charges the Lord Ræ as his Informer and Author, humbly alleging, that in what relation points the Lord Ræ is contrary to the Panel, he does the Panel wrong; and therefore the Panel declares, that whenever it shall please his Majesty to permit the Panel and the Lord Ræ to be confronted, or if then upon difference, the matter be not cleared of the Panel's incoherence, the Panel is ready to hazard his life in it, to the glory of God, and to the clearing of the truth of his business, his Majesty considering the same, with a resolution, that he cannot so make to the said Lord Ræ. If the business be not decided by this, or that if his Majesty is pleased to admit torture before a trial-trial, the Panel is ready with him to bear out the torture, and so to be try'd thereby, with the said Lord Ræ, and let the truth then appear; which if he be not then, whenever it shall please God to call the Panel to bear testimony thereof with his blood, if God be not graciously pleased to bear him up in it, his men to conceive; and if God bear him out in it, then will he be found more after his death, to have been an honest man, and his blood shall be required of the takers thereof.

My Lord Advocate, before any answer to be made by him to the Panel's former reply, produced his Majesty's Letter sent down to the Lords of his Majesty's Privy-Council, of the date of the 24th of June, 1631, and desired the same to be judicially read, of the whole the same follows.

"To our right truly and right well-beloved Cousin and Counsellor, and to our right truly and well-beloved Cousin and Counsellors; to our right truly and well-beloved Counsellors, the Viscount of Devon, our Chancellor; the Earl of Arundell, President of our Privy-Council; and to the remanent Earls, Lords, and other of our Privy-Council, of our Kingdom of Scotland."

Sic significatione,

Charles R.
"Right truly and right well-beloved Cousin and Counsellor, and right truly and right well-beloved Cousin and Counsellors, and right truly and well-beloved Counsellors, we greet you well. Whereas we are informed of a practice in appearance to pernicious, and nearly concerning us, as we would not but take first, trial thereof, both by ourselves, and some of our Council, appointed by us for that purpose. But in the mean time, because of some sinister rumours maliciously dispersed thereto, to the prejudice of our right truly and right well-beloved Cousin and Counsellors, the Marquis of Hamilton, and the Earls of *Highland*, *Rearkirk*, and *Buchan*, and some others; let the like reports be brought unto your ears, we have thought good hereby to declare, that no only we have found by the trial we ourselves have taken, that they are altogether innocent and true thereof; but likewise that the prime informer thereof hath confessed them upon Oath, testifying thus (as we know them to be) as good and faithful Subjects, as we have in any of our Kingdoms. And for the business itself, whenever it shall be fully tried, we will thereafter express our further pleasure concerning others intended therein, according as we shall find just cause, either in punishing any person that shall be found guilty, or in punishing any person that shall be Voz. VII.

"found to have given false information. And whereas we have formerly by our Letters recommended unto you, our right truly and right well-beloved Cousin the Marquis of Hamilton, for furthering the speedy laying and transportation of his men with all full care; there are signs to require you to contribute the best help in your authority or commandments can afford for the same. Which, both out of due regard we have to him, and to his well-being, being very desirous of your help therein, we bid you forward. From our Court, at Greenwich, the 24th of June, 1631."

After reading of which Letter of his Majesty, it is answered by my Lord Advocate, that the saying of the Panel to have the words (or is it inferred) to be repeated in all the rest of the Day, we is all plain; the points of the Day bearing relation of formal deeds done in several times. And where it is alleged by the Panel, that these words, as it was informed, were true, upon a *deposition* of *12* good witnesses, there was no necessity: If it were true, the Day was *de facto*, for the Panel is not accused of a *deposition* in respect of the verity of the matter related, but in respect of his difference from his Author, and that he affirms more than his Author, and with greater certainty than his Author: and that, not content with both these certainties, he follows, it not to the very point of execution, which is evident at the point of certainty, by the words spoken to his Majesty, *de facto* *de facto*, which is more certain by the opposition of the uncertainty of time only, which redoubles the contents of the business. And in the point of execution, by that perilsous and cruel Council, *de re* *de re* the effect of which promises as Council, if God in mercy had not dashed the royal wrath of our so wise and gracious Sovereign, would have produced most horrible effects, nor could be quenched with the pity of men tried by the Panel. And the continuing of the Lord Ræ (whom the Panel calls the prime Author) with himself, in the progress of his behaviour, will manifest the Panel's guiltiness of the points of the Day, whereas he is accused: for the Lord Ræ, who behaved to have greater certainty than the Panel, as we proceeded to the points of positive Privy, prime Agent, Plotters; and so far as the important business Privy, that the business was known, in all which points the Panel has involved himself; but the Lord Ræ was content to reveal the reports made to him by *David Barclay*, and *Mr. Robert Alderson*, to the Panel, without adding or proving. And where the Panel, upon the 21st of May, which was the day of the Marquis's returning from *London* to *England*, came to the Lord Ræ, and told him, that he had been with the Lord-Lieutenant, and acquainted him with the passages, which he had from the Lord-Treasurer, and of the Lord Marquis's return, and that he had conceived, that it might be dangerous at that time for his Majesty to return to the Panel as he intended, the Panel was so moved, that he desired the King to remove from *Greenwich*, to *Whitchell* or *London*; which my Lord Ræ answered, that the Panel had done evil therein, for there was no such badness to be feared; yet notwithstanding thereof, and that his Author had repented him rather, the Panel went to the matter and attended his Majesty at dinner, and at the end of dinner spoke these words of the certainty of the plot, uncertainty of the court, and aided the Council. Like as the Panel being asked, because granted that he met with the Lord Ræ upon that Sunday the Marquis came to Court, and also that he met with the Lord-Treasurer and council'd him, his Majesty's removing from *Greenwich* to *London*. He denies that the Lord Ræ said, that he thought it was evil done. Notwithstanding thereof, the Panel was divided and attended his Majesty at dinner, spoke the words and gave the Council, like as his Majesty being something weakened by that formal Council, sent for the Lord Ræ, and did acquaint him, that some great danger was suggested to his Majesty, upon the Marquis's returning. To which the Lord Ræ answered by Oath, that he knew nothing against the Marquis, for any thing he knew, but that he was as good a subject as any his Majesty had.

And where the Panel would labour to free himself, by denying the Council given to him by the Lord Ræ, it cannot be a warrantable excuse, except he would prove that his Author advised him to do it: which is impossible, seeing the Lord Ræ, his Author, neither did it, nor allowed of it, being done by the Panel. And where it is alleged by the Panel, that he had sufficient warrant from his Informer, he cannot affirm it, as being contrary to the relation made by his Author: which is not a syllable of the Marquis as prime Agent, one of the three Noblemen as Plotters. And whenever the Panel did after the discovery of the business to the Lord-Treasurer, which was upon the 19th of May, it was the Panel's own word, work and deed, as the giving in of the list, expending the certainty of the plot, and urging the putting in execution. And where the Panel alleges, that all was done upon a good intention, and that God is only Judge of the mind; it is true, where the mind is not revealed by speech or act punishable of the Law: but if either speech or deed be done against the Law, the pretence of the mind will never excuse it.

And albeit it be true, as the Panel alleges, *Quid delicta non probantur* before a trial, yet it is as true, *Quid delicta non probantur* before a trial. And as the case of this Day, we have a Law prohibiting *Leasings* and *Calumnies* under the pain of death, and being by the Day, there are three particulars labelled, which his Majesty in his Letter of the date of the 24th of June, has called false informations, and which directly fall within the compass of the Law, as affecting upon the life, honour and estate of the Noblemen; the Panel's excuse by intention is too slender, to free him from the punishment of the Law. And where it is alleged by the Panel, that he has named his Authors, and that he was perfect the time of his relation, and did not contradict him therein, which the Panel alleges for a sufficient ground of his exoneration; the contrary is true: for the Lord Ræ, in his examination upon the 21st of June, doth acknowledge the Panel's examination to be true in all points. Saving the explanations thereof fabricated. But this approbation cannot excuse the subject, and also the subject must be restricted according to the conditions of the explanation, but so it is, that in the Panel's examination, which is approved by the Lord Ræ, there is not one syllable of the Lord Marquis as Privy or prime Agent, or of the three Noblemen as Plotters.

My Lords, I hold it fit, that *they* should be both for their contempt committed *cloſe Priſoners* till *Tuesday* next; and if they do not conſent themſelves before this and then to take the Oath, and yield to be examined before Mr. *Good*, then that they ſhall be brought hither again, and conſured, and made an example. Unto which they all agreed; and ſo we were committed *cloſe Priſoners*, and my Friends ſaid to me to come unto me.

In Camera Stellata *erant Conſilio ſubdno* 9. die Febr. Anno 13 Car. Regia.

Upon Information this day to this Honourable Court, by Sir *John Beake* Knight, his Majesty's Attorney-General, That *John Lilburn* and *John Wharton*, who are now at the Bar of this Court, were on the 24th of *January* laſt ordered to be examined upon Interrogatories touching their unlawful printing, publishing, and diſſembling of libellous and ſeditious Books, contrary to the Decree of this Court, which was verified by Affidavit; and being brought up to the Office to appear and be examined accordingly, the ſaid *Lilburn* refused to appear, and both of them denied to take an Oath to make ſwift answer to Interrogatories, as appears by Certificate of Mr. *Good*: I was highly grieved that their appearance may be recorded, they being now preſent in Court, and that they may now have their Oaths tendered unto them, which if they ſhall conſent to take, that then this Court will proceed to a cenſure againſt them for their high contempt therein, as hath been uſed in like caſes, which the Court held fit: And hath therefore ordered, that their appearance ſhall be recorded, as is deſired. And for that the ſaid Delinquents do now again moſt contemptuouſly refuse to take their Oaths now tendered unto them in open Court, their Lordſhips have further ordered. That the ſaid *Lilburn* and *Wharton* ſhall be remanded to the priſon of the Fleet, there to remain *cloſe Priſoners* until they conſent themſelves in obedience to take their Oaths, and be examined; and that until they do take their Oaths, and yield to be examined by *Monday* night next, their Lordſhips will, on the laſt fitting of this Term, proceed to conſure againſt them for their contempt therein, as is directed.

And upon *Monday* after we were had to *Gray's-Inn*, and I being the firſt there, Mr. *Good* ſaid to me, according to the Lord's order upon *Friday* laſt, I have ſent for you to enter the Oath unto you. Sir, I beſeech you, let me hear the Lord's order. So he caſt it to be read unto me, and then tendered me the Book. Well, Sir, ſaid I, I am of the ſame mind I was as I withal I underſtand, that this Oath is one and the ſame with the *High Commiſſion* Oath, which Oath I know to be both againſt the Law of God, and the Law of the Land, and therefore in brief I do not take the Oath, though I deſire diſpatch for the refusal of it. Well, ſaid he, I did not find for you to diſpatch with you about the lawfulness of it, but only according to my place to tender it unto you. Sir, I had not take it, though I loſe my life for the refusal of it. So he ſaid, he had no more to ſay to me; and I took my leave of him, and came away. And after that, came the old man, Mr. *Wharton*, and it was tendered unto him, which he refused to take; and (as he hath told me) he declared unto him how the *Bishops* had him eight times in priſon for the refusal of it, and he had ſuffered the *Bishops* mercileſs cruelty for many years together, and he would now never take it as long as he lived; and withal told him, that if there were a Court ready at the door to carry him to *Tyburn*, he would be hanged, before ever he would take it. And thus was our day's buſineſs.

Upon the next morning, Feb. 23. about ſeven o'clock, we were had to the *Star-Chamber* Bar again, to receive our cenſure; and ſtood at the Bar about two hours before Sir *John Beake* came: but at laſt he began his accuſation againſt us, that we did ill continue to us former *Delinquents*. And alſo there was another Affidavit of the ſaid *Edward Child* againſt us, the ſum of which, that I had conſulted to him, that I had printed Dr. *Bayly's* *Apology* to Sir *John Beake's* Information, and his *Letter*; and another Book, the *Apology* unto certain *Advocates*; and another Book he called *The Faſty and Foppie of his old Father*; and that I had divers other Books of Dr. *Bayly's* a printing. And that Mr. *John Wharton* had been at the charge of Printing a Book called, *A Breve of the Biſhops late Proceedings*; and another Book, called *Sixteen new Statutes*, and divers other bad Books; and that one *James Oxſlow*, a Turner in *Wychſlayer*-hall, had diſperſed divers of theſe Books. Then I ſaid after this manner: Moſt noble Lords, I beſeech your Honours, that you would be pleaſed to give me leave to ſpeak for myſelf, and to make my juſt defence; and I ſhall labour to do what my ſpeeches, that I ſhall not give your Honours any ill diſturbance, and withal ſhall do it with as much brevity as I can. So having obtained my deſire, I began and ſaid, My Lords, it ſeems there were divers Books ſent out of *Holſted*, which were the heads of theſe Books: and ſome of theſe Books were ſent unto us, and as I underſtand, he delivered divers of theſe Books unto one *John Child*, ſervant to the old man Mr. *Wharton*; and he ſuffered being in priſon, he diſperſed divers of them for the ſaid *Child's* ſake; whereupon the Books were taken in his cuſtody: he being found diſperſing of them, goes to one *Smith*, a *Taylor*, in *Brodenſon*, (as I am informed) and deſires him to get his peace made with the *Bishops*. Whereupon he covenants with ſome of the *Bishops* creatures to betray us into their hands, being newly come out of *Holſted*, which (as he ſaid) did find over theſe Books. So, my Lords, he having purchased his own liberty, lays the plot for betraying me, and I was taken by a Purſuivant and four others of his affidants, walking in the Street with the ſaid *John Child*, who had his hand and contrived the plot before (as I ſaid) able to make good; and the next morning I was committed by Sir *John Beake* to the *Gate-houſe*. Now, my Lords, I do proſeſs before your Honours on the word of a Chriſtian, that I did not find over theſe Books, neither did I know the Ship that brought them, nor any that belongs to the Ship, nor to my knowledge did never with my eyes, either the Ship, or any that belongs unto it.

And being at the *Gate-houſe*, I was removed (by fix of your Honours) to the Fleet, at which time the ſaid *John Child* was removed from *Brodenſon* to *Newgate*, and being kept cloſe there, by, by their threats and perſuade, and the procuring of his own liberty, goes and accuſes me for printing ten or twelve thouſand Books in *Holſted*. And at my examination before Sir *John Beake*, I cleared myſelf of that, and upon *Friday* laſt he made an Affidavit againſt me, in which he hath moſt falſly ſor-

sworn himſelf, and to-day he hath made another, which is alſo a moſt falſe oath; and withal, my Lords, he is known to be a notorious lying fellow, and hath accuſed me for the purchasing of his own liberty, which he hath got. And therefore, I beſeech your Honours, to take it into your ſerious conſideration, whether I am to be cenſured upon ſuch a fellow's Affidavit or no. Then ſaid the Lord-Keeper, There are a mad fellow, ſaying things are thus, that thou wilt not take this Oath, and another truly.

My honourable Lord, I have declared unto you the real truth; but for the Oath, it is an Oath of Inquiry, and of the ſame nature as the *High Commiſſion* Oath; which Oath I know to be unlawful; and withal I find no warrant in the word of God for an Oath of Inquiry, and I thought to be the director of me in all things that I do: and therefore, my Lords, as now ſaid, I dare not take the Oath. (When I named the word of God, the Court began to laugh, as though they had had nothing to do with it.) My Lords (ſaid Mr. *Good*) he told me yeſterday, he dare not take the Oath, though he ſuffered death for the refusal of it. And with that my Lord Priſy-Seal ſpoke. Will you (ſaid he) take your Oath, that that which you have ſaid is true? My Lord (ſaid I) I am but a young man, and do not well know what belongs to the nature of an Oath, [but that which I have ſaid, is a real truth] but that much; by God's appointment, I know an Oath ought to be the end of all controversy and ſtrife, *Heb. vi. 16.* and if it might be ſo in this my preſent caſe, I would ſafely take my Oath, that what I have ſaid is true. So they ſpoke to the old man, my fellow-prisoner, and asked him whether he would take the Oath? So he deſired them to give him leave to ſpeak; and he began to thunder it againſt the *Bishops*, and told them they required their Oaths of the Kings Subjects; namely, the Oath of Churchworfhip, and the Oath of Canonical Obedience, and the Oath ex Officio, which (ſaid he) are all againſt the Law of the Land, and by which they deceive and perjure thouſands of the King's Subjects in a year. And withal, my Lords, (ſaid he) there is a maxim in Divinity, that we ſhould prefer the glory of God, and the Good of our King and Country, before our own lives. But the Lords wondering to hear the old man begin to talk after this manner, commanded him to hold his peace, and to answer them, whether he would take the Oath or no? To which he replied, and deſired them to let him talk a little, and he would ſay then by and bye. At which all the Court beſt out a-laughing, but they would let him go on, but he commanded ſilence (which if they would have let him to proceed, he would have ſaid, appear'd the *Bishops*, as they were never in their lives in an open Court of Judicature). So they ſaid us again, whether we would take the Oath? Which we both again refused; and withal I told them, that for the reaſons before I durſt not take it. Then they ſaid, they would proceed to cenſure. I bid them do as they pleaſed, for I knew myſelf innocent of the thing for which I was imputed and accuſed; but yet, notwithstanding, did ſubmit my body to their Honourable pleaſure. So they cenſured us 5000 ſignets, and then ſtood up Judge *Jones*, and ſaid, It was fit, that I being a young man, for example ſake, ſhould have ſome corporal puniſhment uſed upon me. So my cenſure was to be whips, but neither time nor place allotted. And for the old man, in regard of his age, being eighty-five years old, they would ſpare his corporal puniſhment, though (ſaid they) he deſerves it as well as the other (meaning me), yet he ſhould ſtand upon the Pillory: but I could not underſtand or perceive by my cenſure, that I was to ſtand upon the Pillory. And when I came from the Bar, I ſpoke in an audible voice, and ſaid, My Lords, I beſeech God to bleſs your Honours, and to diſcover and make known unto you the wickedneſs and cruelty of the Prelates.

In Camera Stellata *erant Conſilio ſubdno* 13. die Febr. Anno domini tercio Car. Regia.

Whereas, upon Information to this Court the ninth of this inſtant *February*, by Sir *John Beake* Knight, his Majesty's Attorney-General, that *John Lilburn* and *John Wharton* (then preſent at the Bar) were the authors of *January* laſt ordered to be examined upon Interrogatories touching their unlawful printing, reporting, publishing, and diſſembling of libellous and ſeditious Books, contrary to the Decree of this Court, which was verified by Affidavit; and being brought up to the Office to appear and be examined, the ſaid *Lilburn* refused to appear, and both of them denied to take an Oath to make ſwift answer to Interrogatories, as appears by the certificate of Mr. *Good*, Deputy Clerk of this Court, the Court did on that day order, that their appearances ſhould be recorded, they being preſent in Court as ſoreſaid; and that in reſpect the ſaid Delinquents did then again contemptuouſly refuse to take their Oaths tendered to them in open Court, they ſhould be remanded to the priſon of the Fleet, there to remain *cloſe Priſoners*, until they conſent themſelves in obedience to take their Oaths and be examined; and that ſaveſ they did take their Oaths, and yield to be examined by *Monday*-night next then next following, and now laſt ſaid, their Lordſhips ordered on this ſitting-day proceed to a cenſure againſt them for their contempt therein. Now this day the ſaid *Lilburn* and *Wharton* being again brought to the Bar, his Majesty's ſaid Attorney informed this Honourable Court, that they ſtill continued in their former obſtinacy, and contemptuouſly refused to take their Oaths, to make true answer to the Interrogatories, although they had been ſoreſaid, and that their Oaths offered to be given unto them by Mr. *Good*, Deputy Clerk of this Court, who now certified the ſame in Court; and therefore his Majesty's ſaid Attorney humbly pleaded on his Majesty's behalf, that their Lordſhips would now proceed to cenſure againſt the ſaid Delinquents, for their great contempt and diſobedience therein. Whereupon their Lordſhips endeavoured, by ſoft perſuaſions, to draw them to conformity and obedience, and withal offered, that if they yet would ſubmit and take their Oaths, their Lordſhips would accept thereof, and not proceed to cenſure againſt them. But ſuch was the miſerable diſobedience and contempt of the ſaid Delinquents, that they ſtill perſiſted in their former obſtinacy, and wilfully refuſed to take their Oaths. In reſpect whereof the whole Court did with an unanimous conſent, declare and adjudge the ſaid *Lilburn* and *Wharton* guilty of a very high contempt and offence, of dangerous contumacious and evil examples, and worthy to undergo very ſevere pains, and exemplary cenſure; which might deter others from the like preſumptuous boldneſs in reſuſing

* to take a legal Oath, without which, many great and excellent offences, to the prejudice and danger of his Majesty, his Kingdom, and his loving Subjects, might go away undiscussed, and unpunished. And therefore their Lordships have now ordered, adjudged and decreed, That the said *Lilburn* and *Wharton* shall be remanded to the Fleet, there to remain until they conform themselves in obedience to the orders of this Court, and that they shall pay five hundred pounds a-piece for their several fines to his Majesty's use, and before their enlargements out of the Fleet, become bound with good sureties for their good behaviour. And to the end that others may be the more deterred from daring to offend in the like kind hereafter, the Court hath further ordered and decreed, That the said *John Lilburn* shall be whipt through the Streets, from the prison of the Fleet unto the Pillory, to be erected in such time, and place, as this Court shall think fit and lawful; and that both he and the said *Wharton* shall be both of them put in the said Pillory, and from thence to be removed to the Fleet, there to remain according to this Decree.*

After our confinement, we had the liberty of the prison for a few days; but third man, my fellow-prisoner, went to the Warden of the Fleet, and told him the sum of that which he intended in the Star-Chamber, to have spoken against the Bishops, if the Lords would have let him. He told the Warden, how the Bishops were the greatest Tyrants that ever were since *Adam's* creation; and that they were more cruel than the Canibals, those Monsters; for (said he) they presently devour men, and put an end to their pain, but the Bishops do it by degrees, and use many ways in tormenting their cruelty and cruelty upon those that stand out against them, and therefore are more cruel than the Canibals, &c.

This came to the Lords of the Council's ears, whereupon we were the next Monday after brought both together, and locked up close prisoners in one Chamber, without any order or warrant at all, but only Warden *Jasper's* bare command and pleasure. But the old man, about three weeks after, made a Petition to the Lords of the Council, that he might have some liberty; and being very weak, more likely to die than to live, he had his liberty granted him the Term: but I do still remain close prisoner.

Upon Monday the 18th of April, 1638, I was cruelly whipp'd through the Streets to the Fleet, and at the last carried to the Pillory, where I was undressed from the Curt, and having put on some of my clothes, went to the Towers, where I stood a pretty while waiting for my Surgeon, who was not yet come to dress me, where were many of my friends, who exceedingly rejoiced to see my courage, that the Lord had enabled me to undergo my punishment so willingly.

I having a desire to retire into a private room from the multitude of people that were about me, which made me like to faint; I had not been there long, but Mr. *Ligonier*, the Tipstaff of the Star-Chamber, came unto me, saying, the Lords sent him to me, to know if I would acknowledge myself to be at fault, and then he knew what to say unto me. To whom I replied, Have their Honours caused me to be whipp'd from the Fleet to the Pillory, and do they now send to know if I will acknowledge a fault? They should have done this before I had been whipp'd; for now, seeing I have undergone the greatest part of my punishment, I hope the Lord will assist me to go through it all: and beside, if I would have done this at the first, I need not to have come to this: But as I told the Lords when I was before them at the Bar, so I desire you to tell them again, that I am not conscious to myself of doing any thing that deserves a punishment, but yet I do willingly submit to their Lordships' pleasures in my case. He told me, if I would confess my fault, it would save me a standing in the Pillory: otherwise, I must undergo the burden of it.

Well (said I) I regard not a little outward disgrace for the cause of my God; I have found already that few others as in him, in whom I have lived, that though his strength, I am able to undergo any thing that he will be afflicted on me; but he thinks that I had very hard measure, that I should be condemned and thus punished upon two Oaths, in which the party has most fully forsworn himself, and because I would not take an Oath to betray mine own innocency. Why, Paul found more mercy from the Heathen Roman Governor, for they would not put him to an Oath to accuse himself, but suffered him to make the best defence he could for himself: another would they condemn him, before his accusers and he were brought face to face, to justify, and fully to prove their accusation; but the Lords have put death to me, for my accusers and I were never brought face to face, to justify their accusation against me. It is true, two false Oaths were sworn against me, and I was thereupon condemned; and because I would not accuse myself, And to be went away, and I prepared myself for the Pillory, to which I went with a joyful courage, and when I was upon it, I made oblation to the Lords, to use them (as I suppose) looking out at the Star-Chamber window towards me. And so I put my neck into the hole, which being a great deal too low for me, it was very painful to me, in regard of continuance of the time that I stood on the Pillory, which was about two hours; my back being also very sore, and the Sun shining to exceeding hot, and the Tipstaff-men not suffering me to keep on my hat to defend my head from the heat of the Sun, so that I stood there in great pain: yet through the strength of my God I underwent it with courage, to the very last measure; and lifting up my heart and spirit unto my God, I began to speak after this manner:

My Christian Brethren,

Tell you that I love the Lord *Jesus Christ*, and desire that he should reign and rule in your hearts and lives, to you especially, and to as many as hear me this day, I do wish this speech

I told here in the place of ignominy and shame; yet to me it is not so, I do love and embrace it, as the *Wise Men* Cry of *Christ*, and as a badge of my Christian Profession: I have been already whipp'd from the Fleet to this place, by virtue of a sentence from the honourable Lords of the Star-Chamber, the cause of my confinement I shall declare unto you as briefly as I can.

The Lord, by his special hand of Providence, so ordered it, that not long ago I was in *Holland*, where I was like to have perished myself in the course of Trading, that he, he have brought me in a pretty large portion

of earthly things, (after which my heart did too much run;) but the Lord having a better portion at store for me, and more durable riches to bestow upon my Soul, by the same hand of Providence, brought me back again, and cast me into easy affliction, that thereby I might be weaned from the World, and for the variety and easiness of all things therein. And he hath now pitched my soul upon such an object of beauty, amenableness, and excellency, as is so permanent and endurable, as eternity itself; namely, the personal sweetest of the Lord *Jesus Christ*, the sweetness of whose presence no affliction can ever be able to weild out of my Soul.

Now, while I was in *Holland*, it came there were seven Books of that noble and renowned Doctor *Johannes Bynholt* sent unto England, which came into the hands of one *Edmund Chillingworth*; for the sending over of which I was taken and apprehended, the first being before laid by one *John Chillingworth* (whom I well knew, and took to be my Friend), servant to my old fellow-labourer, Mr. *John Wharton*, living in *Amsterdam*, after this manner:

I walking in the street with the said *John Chillingworth*, was taken by the Pursuivants and his men, the said *John*, as I verily believe, having given direction to them where to stand, and he himself was the third man that laid hands on me so hold me.

Now, at my capture before the Lords, I there declared upon the word of a Christian, that I first not over these Books, neither did I know the Ship that brought them, nor any of the men that belonged to the Ship, nor to my knowledge did I ever see either Ship, or any appearing to it in all my days.

Besides that, I was accused at my examination before the King's Attorney, at his Chamber, by the said *Edmund Chillingworth*, Butcher-fellow, living in *Comen-Street*, near *St. Andrew's*, and late prisoner in *Bridewell* and *Newgate*, for printing ten or twelve thousand Books in *Holland*, and that I would have printed the *Unwearing the Mystery of Iniquity*, if I could have gotten a true copy of it; and that I had a Chamber as Mr. *John Fox's* book at *Delft*, where he thinks the books were kept.

Now, here I declare before you all, upon the word of a suffering Christian, that he might as well have accused me of printing a hundred thousand books, and the one been as true as the other. And for the printing the *Unwearing the Mystery of Iniquity*, upon this word of an honest man, I never saw, nor to my knowledge heard of the book, till I came back again into England. And for my having a Chamber at Mr. *John Fox's* house at *Delft*, where he thinks the books were kept, I was far from having a Chamber there, as I never lay in his house but twice or thrice at the most; and upon the last Friday of the last Term, I was brought to the Star-Chamber-Bar, where before me was sent the said *Edmund Chillingworth's* Affidavit, upon which against Mr. *John Wharton* and myself, the sum of which oath was, That he and I had printed (as *Ratton*, in *Holland*) Dr. *Bynholts* *Mystery*, and his *Letter*, with divers other scandalous books.

Now, here again I speak it in the presence of God, and all you that hear me, that Mr. *Wharton* and I never joined together in printing either, or any other books whatsoever; neither did I receive any money from him toward the printing any.

Withal, in his first Oath, is peremptorily sworn, that we had printed them at *Rotterdam*: unto which I likewise say, That he hath in this particular forsworn himself: for nineteen parts, I never in all my days either printed, or caused to be printed, either for myself, or for Mr. *Wharton*, any books at *Rotterdam*; neither did I come into any Printing-house there, all the time that I was in the City.

And then upon the *Twelfth* after, he swore against both of us again. The sum of which oath was, that I had confessed to him (which is most false) that I had printed Dr. *Bynholts* Answer to Sir *John Bardsley's* Informations, and his *Letter*, and another Book, called, *Certain discourses to the Old Liberty*; and another Book, called, *The Power and Impunity of the Old Liberty*; and that I had done other Books of the said Dr. *Bynholts* on printing, and that Mr. *Wharton* had been as the charger of printing a Book, called, *A Brevis of the Bishops late Proceedings*; and another Book called, *Seven New Questions*; and as this oath hath sworn they were printed at *Rotterdam*, or somewhere else in *Holland*; and that one *James Oldham*, a Turner, keeping Shop at *Wynneburgh-hall* Gate, dispersed divers of these Books. Now, in this oath he hath again forsworn himself in a high degree; for whereas he took his oath that I had printed the Book, called, *The Power and Impunity of the Old Liberty*; I here speak it before you all, that I never in all my days did let one of them in print: but I must confess, I have felt and read it in written hand, because the Doctor was confused. And as for the other Books, for which he hath laid these in printing; so that I answer, that for my own particular, I never read nor saw any of the Doctor's Books, but the forenamed four in English, and one little thing more of about two fols of paper, which is intitled to the *Unity of the Old Liberty*. And as for his Latin Books, I never saw any but two, namely, his *Flagellum*, for which he was first confined in the High-Commission-Court, and his *Abolition*, which were both in print long before I knew the Doctor. But it is true, there is a second edition of his *Flagellum*, but that was at the press above two years ago; namely, *Ann* 1634, and some of this impression was in England before I came out of *Holland*.

And these are the main things for which I was confined and condemned, being two Books in which the said *Chillingworth* hath palpably forsworn himself, and if he had not forsworn himself, yet by the Law (as I am given to understand) I might have escaped myself him, being a pious person himself, and a prisoner, and had that which he did against me for purchasing his own Liberty, which he hath by such Justly means got and obtained; who is also known to be a lying fellow, as I told the Lords I was able to prove and make good.

But besides all this, there was an inquisition-oath tendered unto me (which I refused to take) on four several days, the sum of which oath is thus much: 'You shall swear that you shall make sure answer to all things that shall be asked of you: so help you God.' Now you see one I refused as a foolish and unlawful oath: it being the High-Commission oath, whereunto the Prisoners were bound, and still do, to basely to torment, afflict and undo the dear Saints and Servants of God. It is an oath against the Law of the Lord (as Mr. *Nicholas Fair* in his Argument doth prove): And also it is expressly against

* The Pillory was placed between *Wynneburgh-hall* Gate and the Star-Chamber.

† And as the Court view him along, he repeated several Texts of Scripture, and told enthusiastically to the People, which for brevity's sake is here omitted.

not discouraged and knock'd off from the study of it, because of the obscurity and darkness of it; for the Lord hath provided his enlightening Spirit unto all his people that are laborious and desirous to know him aright, and also he hath promised a blessing, and promised a blessing unto all that read and labour to keep the things contained in this Book, *Rev. i. 3.* My Christian Brethren, in the bowels of *Jesus Christ*, I beseech you do not contemn the things that are deliver'd to you, in regard of the meanness and weakness of me the instrument, being but one of the meanest and unworthiest of the servants of *Jesus Christ*, for the Lord may think such great things by weak means, that his power may be more seen, for we are too ready to cast our eye upon the means and instrument, not looking up unto that Almighty power that is in God, who is able to do the greatest things by the weakest means, and therefore out of the mouths of *Isaiah* and *Sauley* he hath ordained through, *Psalm* viii. 2. And he hath chosen the feeble things of the world to confound the wise, and God hath chosen the weak things of the world to confound the things which are mighty, and base things of the world, and things which are despised, hath God chosen; yea, things which are not, to bring to nought the things that are, *1 Cor. i. 27, 28.* And he gives the reward wherefore he is pleased to do so; *Thou art God should glory in his promise.*

So you for God is not tryed by any instrument and means to effect his own glory, but he by the weak instrument is able to bring to pass the great things.

It is true, I am a young man, and no Scholar, according to that which the World counts Scholarship, yet I have obtained mercy of the Lord to be faithful, and he, by a Divine Providence, hath brought me hither this day; and I speak to you in the name of the Lord, being assisted with the Spirit and Power of the God of Heaven and Earth: and I speak not the words of malice or uncharitableness, but the words of innocency, and mature deliberation; for I do confute with my God, before I come hither, and desired him that he would direct and enable me to speak that, which might be for his glory and the good of his people. And as I am a soldier, fighting under the banner of the great and mighty *Captain*, the Lord *Jesus Christ*, and as I look for that Crown of immortality, which one day I know shall be set upon my temple, being in the conviction that I am so, I dare not hold my peace, but I speak unto you with boldness as the might and strength of my God, the things which the Lord as mercy hath made known unto my soul, come life, come death.

[When I was hereabout, there came a fat Lawyer, I do not know his name, and commanded me to hold my peace, and leave my preaching. To whom I replied and said, Sir, I will not hold my peace, but I speak my mind freely, though I be hanged at Tyburn for my pains. It seems he himself was pained as touched, as the Lawyers were in Christ's time, when he spake against the *Scribes* and *Pharisees*, which made them say, *Adversary, in saying thus thou resistest us also.* So he wroth his way, and [I think] complained to the Lords, but I went on with my speech, and said:]

My Brethren, be not discouraged at the ways of God for the affliction and cross that doth accompany them, for it is love and comfortable dealing in the yoke of *Christ* for all that, and I have found it to be by experience; for my soul is filled to full of spiritual and heavenly joy, that with my tongue I am not able to express it, neither are any capable (I think) to partake of so great a degree of consolation, but only those upon whom the Lord's gracious afflicting hand is.

And for mine own part, I find this day in the place of an evil doer, but my conscience witnesseth that I am not so. [And hereabout I put my hand into my pocket, and pulled out three of worthy Dr. *Baynes*'s Books, and threw them among the people, and said,] There is part of the Book, for which I suffer, take them among you, and read them, and see if you find any thing in them against the Law of God, the Law of the Land, the Glory of God, the Honour of the King or State.

I am the son of a Gentleman, and my friends are of rank and quality in the Country where they live, which is two hundred miles from this place, and I am in my present condition deserted of them all; for I know, not one of them dare meddle with me in my present affliction, being I am thus by the *Scorpions*, [the *Proctors*], and for anything that I know, it may be I shall never have a favourable countenance from any of them again; and withal, am a young man, and likely to have lived well, and in plenty, according to the fashion of the world; yet notwithstanding, for the cause of *Christ*, and so to do him service, I have and do have adieu to father, friends, and riches, pleasures, ease, contented life and blood, and lay all down at the foot stool of *Jesus Christ*, being willing to part with all, rather than I will dishonour him, or in the least measure part with the peace of a good conscience, and that sweetness and joy which I have found in him. For in sated *Christ* is the quinquance of my desires, and so far from thinking my affliction and punishment, which I have this day endured, and still do endure and groan under, a disgrace, that I receive it as the welcome *Cross* of *Christ*, do think myself this day more honoured by my sufferings, than if a crown of gold had been set upon my head; for I have in some part been made comfortable to my Lord and Master, and have in some measure drank of the same Cup, which he himself drank of, while he was in this fatal world. For he shed his most precious blood for the salvation of my poor soul, that so I might be reconciled to his Father; therefore am I willing to undergo any thing for his sake, and that inward joy and consolation within me, that carries me high above all my pains and torments. And you, [my Brethren] if you be willing to have *Christ*, you must own him, and take him upon his own terms, and know that *Christ* and the *Cross* is inseparable, for he that will live godly in *Christ* *Jesus*, must suffer persecution and all ill; it is the lot and portion of all his chosen ones, through many afflictions and trials we must enter into glory; and the *Apostle* *Paul*, *Thou art to be without affliction, unless all are partakers, then are ye blessed, and so on.* And therefore, if you will have *Christ*, sit down and reckon before ever you make profession of him, what he will cost you; lest when you come to the

trial, you dishonour him; and if you be not willing and contented withal, and let all go for his sake, you are not worthy of him.

If parents, husbands, wife or children, lands or livings, riches or honours, pleasure or ease, life or blood, stand in the way, you must be willing to part with all these, and to entertain *Christ* naked and alone, though you have nothing but the *Cross*, or else you are not worthy of him; *1 Peter* x. 37, 38.

Oh, my Brethren, there is such sweetness and contentment in enjoying the Lord *Jesus* alone, that it is able, where it is felt, to make a man go through all difficulties, and endure all hardships which may possibly come upon him. Therefore, if he call you to it, do not deny him, nor his truth in the least manner; for he hath said, *He that denies me before men, I will deny before my Father, which is sufficient.* And now it is the time that we must show ourselves good soldiers of *Jesus Christ*, for his truth, his cause and glory lies at stake in a high degree; therefore put on courageous resolutions, and withdraw your necks and loins from all false power and worship, and fight with courage and boldness in this spiritual battle, in which battle, the Lord before your eyes hath raised up some valiant Champions that fought up to the ears in blood: therefore be courageous soldiers, and fight it out bravely, that your God may be glorified by you, and let him only have the service, both of your inward and outward man, and stand to his cause, and love your own souls, and fear not the face of any mortal man, for God hath promised to be with you, and uphold you, that shall valiantly fight for him, *Psalm* xli. 10, 11. But now, how few are there that dare show any courage for God and his cause, though his glory lies at the stake, but think themselves happy and well, and content themselves with men, if they can sleep in a whole skin; where *Christ* hath said, *He that will save his life shall lose it, and he that will lose his life for his sake, shall find it.* *What shall it profit a man, if he gain the whole world, and lose his own soul?*

Therefore it is better for a man to be willing and contented to let all go for the enjoying of *Christ*, and doing him service, than to be down and sleep in a whole skin, though in so doing he gain all the world, and see him dishonoured, his glory and truth trodden under foot, and the blood of his servants shed and spilt.

Yes, without doubt, it is; but many are in their times, so far from suffering valiantly for *Christ*, that they rather dishonour men from it, and count it a point of singularity and pride, and self-end, for a man to put himself forward to do God service; asking, what calling and warrant any private man hath thereto, seeing it belongs to the Ministers to speak of these things? Yes, Sir, do so; but alas, they are so cowardly and fearful, that they dare not speak.

And therefore it belongs also to thee, or me, or any other man, if thou be a soldier of *Jesus Christ*, whatsoever by place or calling thy rank or degree be, be it higher or lower, yet if he call for thy service, thou art bound, though others stand still, to maintain his power and glory to the utmost of thy power and strength, yet, to the shedding the last drop of thy blood; for he hath not led his people unto the death for thy sake, but shed his precious blood for the redemption of thy soul. Hath he done this for thee, and darrest thou be him dishonoured, and his glory lie at the stake, and not speak in his behalf, or do him the best service thou canst?

If out of a base and cowardly spirit that thou dost, let me tell thee here, and that truly to thy face, thou hast a Devil in thy heart, which thou lovest more than God, and that thou shalt one day certainly find by usual experience. Alas, if men should hold their peace in such times as these, the Lord would cause the very stones to speak, to convince man of his cowardly balances.

Having proceeded in a manner thus far by the strength of my God, with boldness and courage in my speech, the *Warden* of the Fleet came with the fat Lawyer, and commanded me to hold my peace. To whom I replied, I would speak and declare my cause and mind, though I were to be hanged at the gall for my pains. And he could procurement to be made upon the Pillory, for bringing to him the Books: so then he commanded me to be gagged, and if I spoke any more, that then I should be whipt again upon the Pillory.

So I remained about an hour and a half gagged, being intercepted of much matter, which by God's assistance I intended to have spoken; but yet with their cruelty I was nothing at all daunted, for I was full of comfort and courage, being mightily strengthened with the power of the Almighty, which made me with cheerful triumph over all my sufferings, not feeling one sad countenance or discontented heart.

And when I was to come down, having taken out my head out of the Pillory, I looked about me upon the people, and said, I am more than a conqueror through *Christ* who hath helped me. Let the King live for ever, and so I came down, and was had back again to the Tower, which I, together with Mr. *Wharton*, find a while, all our went to the Warden to know what should be done with me, who gave order we should be carried back again to the Fleet.

After I came back to the prison, none were suffered to come to me, but the Surgeon to dress me.

[Here Lilburn gives an account of his cruel Whipping, &c. but as it is afterwards mentioned in the deposition before the Lords, is here omitted.]

The next that I intended by the strength of my God to have spoken [if I had not been prevented by the Gag], I now forbear to set down, in regard I hear I am to come into the Field again to fight a second Battle, and which time I reserve it. If the Lord so order it that I may have liberty to speak, I doubt not but by the might and power of my God, in whom I rest and trust, valiantly to display the weapons of a good Soldier of *Jesus Christ*, come life, come death: and in the mean time, so what I have here said and written, I set to my name, by me, *John Lilburn*, being written with part of mine own blood.

John Lilburn.

At the Inner Star-Chamber, the 18th of April, Anno Dom. 1638.

P R E S E N T.

Lord Archbishop of Canterbury,
Lord-Keeper,

Lord-Treasurer,
Lord-Privy-Scal,

Earl of Salisbury,
Earl of Suffolk,

Lord Carrington,
Lord Newcastle,

Mr. Secretary Cook,
Mr. Secretary Widdelsham,

WHEREAS *John Lilburn*, Prisoner in the Fleet, by Sentence in the Star-Chamber, did this day suffer condign punishment for his several Offences, by whipping at a cart, and standing in the

pillory; and as their Lordships were this day informed, during the time that his body was under the said execution, audaciously and wickedly did not only utter sundry scandalous speeches, but likewise

At the Inner Bar-Chamber, the 18th of April, Ann Dom. 1638.

Præfent Lord Archbishop of Canterbury, Lord-Keeper, Lord-Treasurer, &c.

Whereas *Jakob Lilburne* prisoner in the Fleet, by sentence in the Star-Chamber, did that day suffer cruel punishment for his several offences, by whipping at a Cart, and branding in the Pillory; and as their Lordships were thus day informed, during the time that his body was under the said execution, audaciously and wickedly did not only utter sundry blasphemous speeches, but likewise scattered divers copies of seditious Books amongst the people that beheld the said execution; for which very things, amongst other offences of like nature, he hath been censured in the said Court, by the aforesaid sentence it is therefore by their Lordships ordered, that the said *Jakob Lilburne* should be laid along with iron on his hands and legs, in the Ward of the Fleet, where the usual custom of prisoners are said to be put; and that the Warden of the Fleet take special care to hinder the resort of any persons whatsoever unto him; and particularly, that he be not supplied with money from any friend; and that he take special notice of all Letters, Writings, and Books brought unto him, and seize and deliver the same unto their Lordships; and take notice from time to time who they be that resort unto the said prison, to advise the said *Lilburne*, not to speak with him, and inform the Board thereof. And it was lastly ordered, that all persons that shall be hereafter produced to receive corporal punishment, according to sentence of that Court, or by order of the Board, shall have their garments searched before they be brought forth, and neither writing nor other thing suffered to be about them, and their hands likewise to be bound, during the time they are under punishment. Wherein, together with the other punishment, the said Warden of the Fleet is hereby required to take notice, and to have especial care, that their Lordships order be accordingly observed.

Examined per Dudley Carleton.

And execution of this latter sentence in a most barbarous and inhuman manner, was punctually proved by sufficient witnesses, as follows, *viz.* Mr. Higge his Surgeon again testified, that that night Mr. Lilburne suffered, he was had back to the Fleet, and he repairing to Dr. Graue, to crave his advice, he advised him to let his patient bleed, to prevent a fever; and he accordingly came the next morning to the Fleet to let his patient bleed, and dress his feet, but he found him locked up close in a room, and was by the Officers of the Fleet denied access unto him. Wherupon he immediately went to the Warden, being then at Westminster, who denied him access to the said Mr. Lilburne, till the afternoon that he came home; which was a great act of cruelty, and much to the danger of Mr. Lilburne's health, and welfare; and the next day they removed him down to the Common Gaol, where they laid him in irons, and several times wounded him, to the extreme hazard of his life, and several times denied him access to him in his extremity.

Dr. Hakdard, Justice of the Peace, made Oath to this effect, that when Mr. Lilburne was prisoner in the Fleet, he was desired as a Physician to visit him; and going so to do, he was again and again denied access to him; but upon much importunity to the Warden, he was admitted to him; when he found in an extreme violent fever, lying in sweat upon both hands and legs, to the extreme hazard of his life.

Mr. Henry Doe further declared, that after Mr. Lilburne had suffered, he went often to visit him, who was laid in irons, and his friends denied access to him; and that the Officers of the Fleet strongly endeavoured to flave him; so that many times his friends were forced to bring his meat to the poor man's bag, and give them money to convey it to him through a hole in a wall betwixt them and him. Mr. Thomas Heuer further declared, that after Mr. Lilburne suffered, he often went to visit him, and was beat by the Gaolers, and was in danger to have lost his life for doing; and that they to flave him laboured to flave Mr. Lilburne, that they were forced to convey his diet to him by the poor men that begged at the grate; but the Gaolers finding out that Mr. Lilburne per his diet that way, they dealt to convey it by the poor men, that Mr. Lilburne was denied of that way of relief, and then his friends put the iron of one Archer that was prisoner in the next room to him, for assisting the Deputy of Ireland for marking one Edward, to convey his victuals to him; which was done by stealth, through a hole where a board was pulled up in his door, when the rest of the prisoners were at the Chapel at service; and, my Lords, divers times the conveying of his meat to him, cost him and his friends, upon the prisoners, &c. more than the meat itself.

Robert Ellis, late a fellow-prisoner with Mr. Lilburne in the Fleet, upon Oath declared before their Lordships, that the Officers of the Fleet after they brought Mr. Lilburne into the common Ward, kept him very barbarously and cruelly, laying him for a long time in cross, binding his hands from him, and his viaticum; and several times had like to have slain him, and murther him, and he continually believed, that if he had not helped him, for which they took his bed from him, and put him off the charity, and kept him five weeks in a dungeon, and had like to have murthered him, and afterwards removed him to the King's Bench, that so they might the more easily have their wills of Mr. Lilburne, &c.

Their Lordships being fatigued of the injustice and illegality of the proceedings, Mr. Bradlow said, that he conceived no man's sufferings in the Kingdom had been so great as his Client's were: for a Gentleman to be so cruelly tortured and whipped, pillory'd, gagged, close imprisoned, ironed, beat and wounded, and that contrary to Law, is a cruelty unheard of, and therefore hoped that for such unparalleled sufferings, and oppressions, the said Board upon their Lordships honorable Justice would give and make him forth unparalleled damages, and recompence many of his Judges that did him injustice be dead, yet he hoped the head of Justice of our Honours, joined with the honourable House of Commons, will be so long, as to reach their living and surviving estates, and out of them, &c. make him speedily, large and unparalleled reparations.

Mr. Gaud then spoke in the behalf of Mr. Lilburne (and afterwards printed his arguments), and said the punishment inflicted upon him may be reduced to four heads:

(1.) Imprisonment, whereby a man is bereaved alive, both the comfort and benefit of his five senses, and is made *Carus femoralis leges*, the unmovable penalty of the law, or as a dead carcass. "To trust, that in itself it is the

effect of all corporal punishments: but the continuance of it, makes it look a lingering death, which, it is better to be upon the sick an hour, than to be imprisoned a year: as it is better to be once out of the Fleet, than to be laid up to a perpetual drooping; especially for an active spirit, there is no such torment as to deprive him of liberty; for active *Talibus* was contained only to sit still: there is no end of such a misery, as the *Hebrew* poet saying Tyram said, *Nemine tibi redit in praxia*, to put a man out of his pain, was always counted a favour. But Mr. Lilburne's imprisonment was aggravated by three things or gradations.

1. A vile imprisonment, not the clearest lined to come to him, we do not find that any of the primitive Christians were used by the Tyrants, nor then that they charge might be answered in the Scripture, *Istam in praxia*, and yet *in praxia*; and many matters of state and high concerns were always excepted; but the Surgeon was not permitted to be near to Mr. Lilburne to dress him, nor the Physician when he was in a fever, a cruelty unknown of amongst the *Turks*: for they are careful of their slaves in their sickness, and fasten them, that they may endure their blows, but it is too probable that those which were Mr. Lilburne's malicious enemies, did too much thrust aside his blood.

2. The Keepers were ordered to take care that no money be conveyed to him, which argues that they had a desire to flave him: the Prophet saith, *It is better to die by the face of the sun, than famine*, which is the greatest of all torments; for all punishments may be undergone by patience, but only hunger: which the more any man thinks by patience to overcome, the more violent it is. Undoubtedly, had it not been for the gift of some poor resolute fellow-prisoners, Mr. Lilburne had been starved to death, for twice that any of the four Houses of Parliament, which were *Lordsburg, commons, knights, burgesses*, bearing, bearing, bearing, and bearing, and bearing, and bearing, yet most justly, did the same Judges for three times punish the instant to be taken or delivery another man. This going about to murder, say the giving of the lie, because it is preparatory to murder, by striking quarrels, was condurable in that Court, *A modo facilius*, much more from the stronger, than in this case used, where there was so much care by itself, that death might probably have ensued, had not God by his extraordinary mercy supported him in their false affliction, their unjust Judges for transgressing not only the bounds of humanity, but all the rules of their own ordinary Justice, ought to make Mr. Lilburne answerable satisfaction.

This imprisonment was for about three years, until he petitioned the Parliament. Many times the best motions of anger are not as a man's own power, because he would not accuse himself as they do, they might have in a passion committed him, and the Sun might have gone down upon their wrath; nay, the Moon might have murthered his passion, or the summer fierce might have melted their frozen cruelty, or the winter cold have allayed the heat of their malice, or the Sea might have made him revolution, but their malice continued three years; and had not been delivered by the Justice of the Parliament, in probability might have continued for ever.

(3.) Whipping, a most painful and shameful punishment; Flagellations and Scourgings being for slaves and unmerciful rogues, and hedge-robbers. In ancient *Edict*, one *Carmentis* brought a slave from *Rome*, and would scourge him cruelly, for which he was questioned, and it was rebuffed, that *Edict* was too pure an act for slaves to breathe in, and it was often refused in the *St. Chamber*, that no Gentleman was to be whipped for any offence whatsoever: it being well known that *Jakob Lilburne's* ancestors have been ancient Gentlemen, and that which their Judges could not be ignorant of, especially the Earl-Marshall, who is petitioned to know all the ancient Gentry in the Kingdom. But the late whippings were never used amongst the *Africans, Persians, Greeks, or Romans*, &c.

1. It was from the Fleet to Westminster (above a mile distance) a great concourse and confidence of people looking upon him, as if he had been some miserable slave.

2. He received every two or three days a blow, 500 strokes at the least for one Mr. Richard, that was laid along with him, testified that so far as he was able to judge, he received not less, but of the first he was most cruel; and this was with a triple-coiled whip, which at least twenty knots upon it.

Although the Roman no malefactor had ever above forty stripes, and every stroke stood for three stripes, for the whip was of three thongs, and but one knot at the end of every thong. *St. Paul* received thirty-nine stripes, which was but thirteen blows. Not long since in *Orlans*, a French was sentenced to be whipped for some time, having shod a poor man's red, telling him that their people *St. Francis* would come and sit with him: such a night, at which time he perswaded and flogged himself to be *St. Francis*, and was taken in bed with her, and it was exactly praised by the King's Advocates, that he might receive fourteen blows with a three-coiled whip, which is infinitely and far such cruelty, because it is as a horse shod with twelve, but the Judges would not suffer him to have above three blows, because *emphatically* four fives, to ours are to be enlarged. And in doubtful matters it must always be presumed for charity and gentleness, according to which account, Mr. Lilburne received 2000 stripes: for in every blow there was twenty stripes, by reason of the twenty knots, which being multiplied in 2000, and in every blow there was shame and pain, compulsion of the flesh, bruising and effusion of blood.

(5.) The Pillory, a punishment formerly painful, but exceeding shameful, and most terrible to a gentleman's nature, to stand two hours in open view of all men, as if he had been unworthy to tread upon the earth, the Sun shining very hot upon him, and not suffered to keep on his hat, and this is cruelly after his cruel whipping, that so they might put him to all the torture and pain that they could, argue abundance of wrath and malice.

This punishment of standing upon the Pillory, was first invented for Mountebanks and Cheats, that having gotten upon banks and fairs, to wrong and abuse the people, were called in the same kind, to find confessions to the view and open shame of the people; but for a Gentleman to be so forced, was never heard of, unless by that cruel Court.

(4.) Gaggings, an unusually and barbarous cruelty, to be exercised upon breath, not men, for man differs from brutes, both nature and reason, and speech, a punishment never heard of in any age, cutting out of tongue, and perforation in cuts of speech have been heard of, but

never in a matter of such a nature; and this to continue for above an hour, till the blood gush'd out of his mouth, as if they would have pluck'd his jaws in pieces, and all this for nothing, O infernal cruelty constrain!

So that by his imprisonment he was made a *block*, a dead trunk, or picture of a man, that had eyes and feet, not hands and handles, nor, by whipping, they endeavour'd to make him a rogue, or a slave; by the shod punishment of the pulley, to make him a choler, guilty of forgery and perjury; and by gagging, to make him a beast, and to upon the whole matter to deprive him of his reasonable soul, such cruelties that were never invented but by *Tyrants and Whores* in human shape, *ferocious Lawless, in human shape*. But then the persons that were to crush and tyrannical oppressors the offence.

1. This cruelty was commanded to be executed by an eminent Court of Justice, professing Christianity, *persons of high rank and high character*. 'Tis the greatest infamy to oppress and do injury, under a pretence of Justice. How often was it refused in this Court, that for a Justice of Peace or Constable to commit a crime, was ten times more severely punishable than in a common person, because it is to life, or rather abuse that sword of authority, to commit or countenance an unlawful action, which was obtained and put into their hands to suppress it.

2. The Emptiness of the persons suggests the offence, *quodam per se non arguit*, for a Gentleman to act against the rule of the Law and Gentility, is more reprehensible than in vulgar persons. It was called the *Great of late-Chamber*, from the eminence of the person, which were Judges: Stars of the greater magnitude, as being the highest Court of ordinary Justice; but Mr. Lilburn's Judges, instead of putting on the garment of Justice, were clothed from head to foot, and their consciences filled and moistened, with earliness and injustice mixed with the most polluted malice that ever entered into the hearts of any Judges.

And though some of them be dead, yet Justice lies though the party be dead; whenever becomes of them, their estates ought to make satisfaction according to their own rules, *non est in corpore, sed in iure*, he that suffers not in his body, must suffer in his parole.

A principal actor in this bloody tragedy was the Lord-Keeper Coventry, not less eminent in cruelty than in place, Judge of the highest list of mercy, the *Chancery*, which abused the edge of the Law, when it is too keen; for the Chief Judge of mercy to degenerate into a savage cruelty, cut head off amongst the *Barbarians*, how heinous is it? Not to speak of the abuse of the deprecatory Archbishop, that monster of cruelty, and sabbatary, whose estate we here sided with him, and therefore little can be expected from it.

The Bishop of London, then Lord-Treasurer, was a principal instigator of Mr. Lilburn by their own *Canon*, no Bishop ought to have a head in blood, because they pretend to be mild shepherds, but cruelty was their genius.

The Earl of Arundel was of an imbecill spirit against Mr. Lilburn, nothing but corporal punishment would allay the heat of his malice; who being Earl-Marshal, could not be ignorant that *John Lilburn* was a Gentleman: for him that by his place was to protect all Gentlemen from injuries, and should from to be active in the punishing such corporal indignities, cruel punishments upon a Gentleman, is a transcendent transgression against the laws of State and honour. It hath been confusable in this Court, to speak contemptuous words of a Gentleman; and how often had he offered insultation, for saying such a one is no Gentleman? And yet the same court and persons not only to say a Gentleman is a rogue, but to add him, as Mr. Lilburn was, in the greatest scandal to the public Justice of the Kingdom, that hath been heard of.

The Judges addressees, that are called the *Fathers of the Law*, and are said to carry Law in their breasts, for them to begin and promote such an unjust and illegal practice, for them that are set as *Comptrolers* to watch over and preserve the people's liberty, to be brought into such a manner, upon the hands of merciless men, was an offence of an exceeding high nature, for had they desired the illegality of their proceedings, and protested against it, as by virtue of their place (in duty) they ought to have done, it might have prevented the sentence. If the proceedings had been regular by informations, and examinations, or *ex parte*, as it was not, unless there had been some direct proof or speaking circumstance or very probable presumption, that Mr. Lilburn had been guilty of some high crime; it had been a grievous thing in them to have adduced in so cruel punishments. But when the pretences was no other, but concerning some of Dr. *Regin's*, Mr. *Burns's*, or Mr. *Pym's* Books, which they knew could be no breach of the peace, and that in the *Star-Chamber*, where there was no information, as in Mr. Lilburn's case, to administer an Oath, was all along with the High-Commission, and directly contrary to the provision of right, in 3 Car. and Justice *Town* had no reason for inflicting the corporal punishment.

But because Mr. Lilburn was a young man, therefore it was fit he should be punished: Is not this to turn Justice into Wormwood? Such Judges have ever been the most dangerous pests to a State and Kingdom, and in former times, for less offence, most severely punished in their persons and estates. The Lord *Comptroler* thrust exceedingly after the blood of this poor Gentleman, and the High-Commissioners had their hands as deep as any of the rest, in regard that by their warrant he was first committed: the most unjust and tyrannical that ever was heard of, so command a poor Gentleman to be taken to prison, without concerning him before them, or asking him whether he was guilty of any misdemeanour, a mere usurpation of authority, taking the sword of Justice into their own hands, not caring to defuse a poor Gentleman, to as they might carry favour with the Prelates their great parents; those High-Commissioners making themselves Judges, Gaolers, and Executions, and what not, to defuse the innocent.

It is considerable what punishment the Gaolers and Executions of this cruel sentence have delivered: for however if a writ be directed to a Sheriff, commanding him to take the body of one who is a Peer of the Realm, or a privileged person, the Officer is excused by his warrant; yet when punishment is clearly against the Law of God, Nature, and Nations, which prohibit all such cruelties and inhumanities, to make them bleed for the blood of Mr. Lilburn, would be an honourable piece of justice, and a precedent of much safety to the subjects in after-times, and Officers would not dare to be so unmercifully cruel; as the Sheriffs insisted for the Ship-money, though they had perjury from the *Exchequer*.

Mr. Lilburn's sufferings are beyond expression, and so honest heart but is feelingly sensible of every blow that was given him; in his imprisonment, Whipping, Pulley, Gagging, Hearings, Flanges, bindings, and the Irons laid upon him, every transgression, *Exposition*, that stands by the laws and liberties of the subject, was so used, and abused; for it might have been any such man's case, as well as his. His estate quite exhausted by their cruelties, his trade left, whereby he gained his livelihood, being before that time in a hopeful way of a Merchant, and well known to be very industrious in his calling; a man able to serve the Public, and by his merits hath procured the title of Lieutenant-Colonel in the present wars: What damages the Parliament will be pleased to adjudge and order him, he humbly submits to their great Wisdoms and honourable Justice, certainly not any of them would have suffered to much for ten thousand pounds.

It is the Lord's great mercy that he is yet alive, having continued with, and gone through such a sea of punishments and miseries. True it is, that in point of reparation, there is no proportion between money and such corporal punishment, to a generous spirit; yet as there was never more indignity and a greater dishonour to the Justice of the Kingdom, than by this wicked fessure, and the cruel execution thereof, thereby proclaiming it to all the world that an *English Gentleman* must be made a slave, to satisfy the malicious and violent humours of a tyrannical Court of Justice:

So it will be a very great honour and reparation to the public Justice of this Land, to give and adjudge Mr. Lilburn exemplary and proportionable damages, to be taken out of the estate of his unjust and malicious Judges, through whose injustice he not only suffered such cruelties for three years, that not one of them would have offered the like, nor sustained one of his stripes for many thousands; but left his trade and livelihood.

The judicial law was blood for blood, an eye for an eye, tooth for tooth, *Gen. Damsel's* accusers were cast into the den of Lions, with their wives and children, though *David* had no hurt by a miracle of mercy; by the equity and morality whereof, Mr. Lilburn ought to have paid and proportionable reparation out of the estates of his unjust Judges and Transgressors, who fought for his blood: but that God prefer of him by his extraordinary love and favour.

But all dropping spirits may cheer up and be encouraged, that Justice will run down like a mighty stream, when it shall be executed upon the greatest offenders: as now there is good hope that Mr. Lilburn shall by ordinance of Parliament have (truly good damages, answerable to his great sufferings, ordered and adjudge him, to be taken out of the estates of his unjust Judges, that may be paid unto him without further expense, who hath been at such extraordinary charges about the same, that to him reparation may be not only just, but reasonable, by which he shall be obliged to venture his life, and all that is dear to him as formerly he hath done, for his Honourable Judges in Parliament assembled.

Wherupon the Lords made the following Order.

Die Penult, 13 Feb. 1645.

"Whereas the cause of *John Lilburn, Gent.* came this day to a hearing at the Bar by his Counsel, being transmitted from the House of Commons, concerning a sentence pronounced against him in the *Star-Chamber*, 13 Feb. Ann. 13. Car. Reg. and after an examination of the whole proceedings, and a due consideration of the said sentence; it is this day adjudged, ordered, and decreed by the Lords in Parliament assembled, That the said sentence, and all proceedings thereupon, shall forthwith be set ever totally vacated, obliterated, and taken off the file; all Courts where they are yet standing, as appeal, and most unjust, against the liberty of the said *Lilburn*, and law of the said *Alagna Chorse*, and unfit to continue upon record: And that the said *Lilburn* shall be for ever absolutely freed, and totally discharged from the said sentence, and all proceedings thereupon, as fully and amply, as though never any such thing had been. And that all other suits and process in the Court of *Exchequer*, for levying of any fine, (if any such be) shall be wholly cancelled and made void; any thing to the contrary in any writ notwithstanding."

John Browne, Cleric. Parliament.

But not affliging me any reparations in that Decree (the doing of which the House of Commons left unto them, and the Lords according to former custom looked upon to be their right in law to do), I pressed their affliging me particular reparations according to Law and Justice, out of the estates of my unjust Judges, that had done me so much wrong; upon which new address to them, they did upon the 5th of March, 1645, order, and decree, and assigned to be paid unto the said *John Lilburn*, the sum of 3000*l.* for his reparations, which for many reasons (as their being aiding in the wars to the King, &c.), they taxed upon the Estates real and personal of *Francis Lord Goringe*, Sir *Francis Wileford*, and *Joan Ingram*, late Deputy-Warden of the Fleet; and I afterwards by another decree for the profit being sent them, out of the said *Wardens* and *Officers* (as they were before the wars), with the allowance of interest at 4*l.* per centum, per annum, in case of abatement; for all or any part of it, in this purpose caused an ordinance to be drawn up, which fully paid their House the 25, 26, and 27th of April, 1645, and afterwards transmitted it to the House of Commons, where by reason of my bloody adversary old Sir *Henry Foe's* Interests, and of my imprisonment by *Manchester's* means in the Tower of London, it lay there till the 1st of August 1645, at which time 7 or 8000 of my true friends in London, signed and caused to be delivered a Petition to the House of Commons for my liberty, and the passing of the said Ordinance. Wherupon the House made this Order.

Die Martii, 1 Augusti 1648.

Sir John Maynard, Sir Peter Wentworth, Lord Curzon, Col. Bysshe, Col. Ludlow, Mr. Holme, Mr. Copley.

"It is referred to this Committee, or any five of them, to consider how Colored *John Lilburn* may have such fine and satisfaction as he is entitled unto, as was formerly intended him by this House."

Henry Elyot, Cler. Parl. Dec. Com. Upud

Upon which Order I got the Committee to meet, and preferred a Petition to them. Upon which Petition, the Parliament having disposed of all that Part of the Lord Grosvenor's Estate that I should have had, unto the Lord Esq. and also compounded with Sir Francis Woodcock's Heir, the said Committee were pleased to sit entirely upon the Lord-Keeper's Estate, as the principal guilty Man; of which, when the young Lord Conway, his Son and Heir, heard thereof in France, he came posting to England as I Amuse, [saying] what such a Precedent might bring upon him, if his Father's Estate [after death] should be compelled to make me Satisfaction; he being in capital Injustice, that it was that Court should be taken, his Estate left him by his Father [if it were true] I would not deny on his Father's palpable Injustice committed in his Lifetime. And *Alas* for being in the said Boyer with his Father, being so unjust as the other, and having a Brother (viz. George Woodcock) and other considerable Interests in the House of Commons, to gladden their Friends there, that they put a Stop to the second reading of the aforesaid Ordinance. When I felt fully understood by the Speaker's Motion, then my great personal Friends, who one Day began to reason with Member of the House [as I may say] Friends about the unreasonable fix my Reputation upon the Estate of the deceased Lord Grosvenor, say, to give me my Reparations at all times the House of those Persons that did me wrong, for fear the Parliament is to be made such to themselves. "For, say, and the Speaker, [as the Member] of me of my Son and Heir. It is to be said in Law, to make Satisfaction to all those Men (out of which I should have been) that I have in the Eye of the Law wronged." [By signing Wm. de Oudis, and Decrees, by the Command of my Supremacy] he would have been a Beggar, although I should have him 5 or 6000 l. per annum; and therefore desired the said Member's Concurrence with him. And for the clamorous Importunity [as they called it] of me and my Friends, to give me Reparations; but yet to do it in such a Way, that the Precedent might not in future make themselves smart for their Injustice to particular Men." Of which, when the said Member told me, he said, they were refused to make the Commonwealth my Paymaster out of the publick Treasury, and colour over the Journals of it with my Pretences. "That Grosvenor's Estate, formerly assigned me, they had since disposed of to the Commonwealth's use, to the Lord Esq. and therefore now it would be so Injustice to the Commonwealth [although in the *Star-Chamber* I never wronged me] to pay me my Reparations." And in finding I was like to be baffled, I delivered the under-written to every individual Member of the Honourable House of Commons.

The Honorable Remembrance of Lieutenant Colonel John Lilburne, Sept. 4. 1648.

Honorable Sir,
Vouchsafe to take Notice, and seriously to consider, That the full Week this present Parliament last, which is now almost half eight Years ago, I presented an humble Petition to the House of Commons, for Justice and Right against the cruel Judges of the High-Chancery-Court, and the *Star-Chamber*; and I had the Honour (the same Day it was presented) to be one of the first Prisoners in England then set at Liberty by this Parliament, and also received a speedy, full, fair, and candid Proceeding, in the hearing and examining my tyrannical Sufferings: But by reason of Multiplicity of publick Business, and other great Obligations, I have not as yet been able to return to the full End of my legal and just Expectation and Right, viz. Reparations for my being, full, and tormenting Sufferings, by the aforesaid unjust and tyrannical Judges. I therefore do humbly to take Notice, That upon the first of August last, there was a humble Petition presented to the Honourable House of Commons, subscribed by many Thousands of honest Citizens, &c. humbly to desire you to put me in full Possession of all your by-past full Justice about my forefend Sufferings: Upon reading and debating of what this Petition, as in Answer to that particular of it, your House were pleased to make this ensuing Order:

Do Morda, 1. August, 1648.

Lord Carr, Sir John Maynard, Sir Peter Wrentham, Col. Byland, Col. Ludlow, Mr. Caply, Mr. Holland.

"It is referred to this Committee, or any five of them, to consider how Colonel John Lilburne may have Satisfaction and Allowance for his Sufferings and Losses, as was formerly intended him by his House." *Henry Ellyng, Cler. Des. Cam.*

Unto which said Committee at their full Sitting, I presented a Petition, the Copy of which was thus followeth:

To the Honourable the Committee of the House of Commons, appointed to consider of Lieut. Col. Lilburne's Business, in reference to the Star-Chamber;

The Humble Petition of Lieut. Col. John Lilburne

Sheweth,
THAT besides your Petitioner's Sufferings by reason of his Banishment unto the Low-Countries, he was first committed by Dr. Lewis, Bishop, 4th, 1637, and afterwards had three Years Imprisonment, in the Common Goal of the Fleet, being whipped from Fleet-Bridge to Whitechapel, and enduring the cruel Torment of above five hundred stripes with knotted Cords. And upwards being set in the Pillory for the Space of two Hours, and by James Ingham, Deputy-Warden of the Fleet, gagged, causing his Jaws almost in Pieces, without Order, which Sentence was given by Lord Keeper Conway, Earl of Manchester, Lord Privy-Seal, Lord Newburgh, Sir Henry Fane, sen. Lord Chief-Justice Mansfield, and Judge John. And after the barbarous Execution of this Sentence, being April 16, 1638, the said Lord Conway, Archbishop of Canterbury, Bishop of London, Earl of Manchester, Earl of Arundel, Earl of Salisbury, Lord Clarendon, Lord Newburgh, Secretary of State, and Whitehall, joined another Sentence, in effect for the flogging of your Petitioner, and for the torturing of him with Irons upon Hands and Legs both Night and Day; and by keeping him close in the common Goal of the Fleet, from the speech of any of his Friends: All which was executed with the greatest

Crash that could be, for the Space of almost three Years together, to the square: It need of his Life, both by flogging him [which was with all Art and Industry several ways attempted]; and also by several Assaults made upon him by the said Warden's Men [in English chains] by the said Deputy-Warden, to the maiming and wounding him, whereby to this Day he is really deprived of the Use of two of his Fingers; All which, with much more, too tedious to be here inserted, was fully proved by Sir Robert Wrentham, before a Committee of your House, whereof Mr. Francis Boyle had the Chair, upon whose Report made, May 4. 1641, your House voted, "That the Sentence in the *Star-Chamber* given against the said John Lilburne, and all the Proceedings thereupon, was illegal, and against the Liberty of the Subject, and also bloody, wicked, cruel, barbarous, tyrannical, and that he ought to have good Reparations therefor." With his Vote (by reason of Multiplicity of Business in your House) sent your Petitioner (some Years of importance and chargeable Attendance) get them transcribed to the Lords; which was obtained in February, 1645, the 15th Day of which Month, your Petitioner's whole Cause was effectually perished at the Lords Bar, by his learned Council, Mr. John Bradshaw and Mr. John Gaud, and there every particular again proved upon Oath, by Testimony of People of very good Quality. Whereupon they concurred in all things with the House of Commons, leaving in the Matter of Reparations but upon the Delivery of a true Narrative, (which your Petitioner sent by his own Hand in a sealed Mouth) delivered unto every particular Lord; they made a further Decree, that your Petitioner should have 10000 l. Reparation out of the Effects of the said Lord Conway, Sir Francis Woodcock, and James Ingham, for the Reason alleged in an Ordinance which they passed in April, 1646, and transmitted to your House; where it hath lain dormant ever since, and is now referred to the Consideration of this honorable Committee.

Now, fearfulness as by the Jewish Laws of God (which are the pure Laws of civil Reason), he thus wilfully aureth his Neighbour is bound to the Performance of seven five things: *First*, "If it be a Benefit or a Wound, like for like, or to redeem it with Money, thereby to satisfy him for his Wound. Secondly, For his Pain and Tumors. Thirdly, For any such thing. Fourthly, For his Loss of Time in his Chalice. Fifthly, For the Shame and Infamy." All which is to be considered according to the Quality of the Person damaged; Which Reparations are to be paid out of the best of the Goods of him that damaged him, and that without Delay.

And as the Law of God, to the Laws of this Nation do abhor, and have severely punished (above all Persons) Judges, many times with the Loss of their Lives and Estates, who under Colour of Law have violated their Oaths, and defrauded the Lives, Liberties and Properties of the People, whom by Law they should have preserved, as may be testified by the forty-four Judges and Justices hanged in one Year by King Edward, divers of them for less Crimes than hath been done in the Case of your Petitioner; as may be seen in the Low-Book called, *The Mirror of Justice*, Page 239, 240, 241, &c. translated and revised this year Parliament; And by Justice Thorpe, in Edm. III's Time, who was condemned to Death for the Violation of his Oath, for taking small sums of Money in Causes depending before him; as appears in the third Part of *Coke's Institutes*, lib. 2. c. 15, 16.

And by the Lord Chief-Justice Tylloche, &c. who in full Parliament in Rob. II's Time, was attacked as a Traitor in the House, and had his Throat cut at Tyburn in the Afternoon, *because he had given it under his Hand, that the King might create one himself, as his Pleighers, avowed rule to seek by, that the Law of the Lord prescribes him;* as appears by the Parliament Records in the Tower, by many of your own Declarations, and also by the Chronicles of England.

Now, far as much as your Petitioner's Sufferings have been unparalelled, and his Prisoners followed thereby altogether in wrong, cruel, having lost his Limbs, &c. And fearfulness as by the Law of God, Nations and Nations, Reparations for Hurt and Damages received, ought to be finished as far as may be in all Persons, though done by Accident, and not intentionally, and though through Ignorance: much more when the Persons offending did it knowingly, and on Purpose, in the Face, say, in spite of the fundamental Laws of the Land, which they were sworn to preserve: And for that the Reparations in the said Ordinance alleged do amount almost to what your Petitioner spent on his three Years full Captivity, and his now almost eight Years chargeable Attendance, in being for it, besides the loss of a most profitable Trade for eleven Years together, and his Wife's, Tumors, Smart and Deluge, sustained by his said tyrannical Sentences.

He therefore humbly prays the Favour and Justice of this honorable Committee for some considerable Augmentation of his said Reparation; and the rather, because his Fellow-sufferer, Dr. Beaufort, had 4000 l. Reparations allowed him, whose Sufferings (he submissively conceiveth) was nothing less to great, in Torment, Pain, and Shame, as your Petitioner's. And fearfulness as the now Lord Conway, Son and Heir to the aforesaid Lord Conway, hath walked in his Father's Steps, in Enmity to the Lives, Liberties, and Freedom of the Nation: By being in arms at the beginning of the Wars against the Parliament, and made his Peace with the Earl of Essex for a small Matter, and since defrauded the Kingdom, his living in France privately, receiving the Profits of the said Estate which his Father lost him: And fearfulness as his said Father (the late Lord Conway) was the aforesaid Man in violating the Laws and Liberty of the Nation, although a Lawyer and Judge, sitting on the famous Seat of Justice, and a Person (as is generally conceived) who got a great Estate by Corruption, and particularly a Man that principally passed, as Chief Judge of the Court, both the aforesaid Sentences against your Petitioner: And as regard the Effects of the said Lord Conway, and Sir Francis Woodcock, by subsequent Orders of both Houses upon urgent Occasions, are much intangled and altered from the Condition they were in 1646, when the Lords ordered your Petitioner some Marks out of them; and for that the Effects of James Ingham cannot be found, nor at present come by: Your Petitioner, therefore, most humbly prays, that the greatest Part, if not all your Petitioner's Reparations may be fixed upon the now Lord Conway's Estate, to be immediately paid your Petitioner, or else that his Reason, and the Profits of his Woods and Gravel may

And if the said Sir Henry Gild, Sir Henry Belknap, and Thomas Bates, or any of them shall compound for their estate, so much of the said three thousand pounds as then shall remain unsatisfied shall be paid unto the said John Lilburn, or his assigns, out of their, or the toll of their possessions. And that Ordinance or Copy thereof, attested under the hand or hands of the Clerk, or Clerks, of one or both Houses of Parliament, shall be a sufficient Warrant to the said Committee of Sequestration in the said County of Durham, to pay the said 3000 l. as is before expressed, unless

the said John Lilburn or his assigns; and likewise to indemnify and save himself, all and every person or persons, that shall any way sit in the performance of the trust and meaning of this Ordinance.

John Evans, Clk. Parliament.
H. Byng, Clk. Parl. Dow. Com.

However, Lieut. Col. Lilburn, after great trouble, and much expense, got but little of the money collected here.

XXI. Proceedings in Parliament against Sir John Finch, Baron of Fordwich, Lord Keeper, for High-Treason, 1640. 16 Car. I.*

THE House of Commons having heard that great Statesman the Earl of Stafford, and zealous Churchman Archbishop Laud, began to prepare an Impeachment against the great Officer of the Law, the Lord-Keeper Finch, of High-Treason.

December 14th, a Committee was appointed to prepare a Charge against him; of which he having notice, fear to the House of Commons a Letter, desiring to be allowed to speak for himself, before any Vote pass against him. Upon this Letter there arose a great debate in the House, and after some time spent therein, it was granted him; and Monday, December the 15th, was appointed for the hearing of him.

On Monday he was admitted in this manner: there was a Chair set for him to make use of if he pleased, and a Stool to lay the Purse upon, a ledge on the side of the Bar on the left hand as you come in; he himself brought in the Purse, and laid it in the Chair, but would not sit down himself, nor put in his Hat, though he was mov'd to it by Mr. Speaker, but spoke all the while bare-headed and standing; the Sergeant at Arms attending on the House, standing by him with the Mace on his shoulder. And spoke as follows.

Mr. Speaker,

I do first present my most humble thanks to this Honourable Assembly for this favour vouchsafed me, in granting me admittance to their presence, and do humbly beseech them to believe it is no desire to preserve myself or my fortune, but to deliver the good opinions of those that have drawn ascribers.

I do profess, in the preface of him that knoweth all hearts, that I had rather go from door to door, and crave *De abbas Salmos, &c.* with the good opinion of this Assembly, than live and enjoy all the honours and fortunes I am capable of.

I do not come hither with an intention to justify my words, my actions, or my opinions; but to make a plain and clear narration for myself, and then humbly to submit to the wisdom and justice of this House myself, and all that concern me.

I do well understand (*Mr. Speaker*) with what disadvantage any man can speak in his own cause, and if I could have told how to have translated my thoughts and actions, by a clearer representation of another (I do so much defy my own judgment in speaking, and my ways in expounding, that I should have been a much wiser suitor another might have done it. But this House will not take words, but with clear and ingenuous dealing; and therefore I shall beseech them to think, I come not hither with a set or studied speech, I come to speak my heart, and to speak it clearly and plainly, and then leave it to your clemency and justice: and I hope if any thing shall rise from me, to work contrary to my message, or intention, suddenly or ill-plotted, you will be pleased to make a friendly construction, and have me the liberty of explanation, if there shall be any; but I hope there shall be no cause for it.

I hope, for my affliction in Religion no man doubteth me; what my education, what, and under whom for many years, is well known; I lived near thirty years in the Society of *Gray's Inn*; and if one that was a renowned Preacher in my time (*Dr. Sibbs*) were now alive, he were able to give testimony to this House, that when a party ill-afflicted in Religion sought to weary him, and tire him out, he had his chiefest encouragement from me.

I have now (*Mr. Speaker*) been fifteen years of the King's Council, from the first hour to this minute, no man is able to say that ever I was author, adviser, or confederate in any mischief.

I have told the King (my gracious Master), after I had served him twenty years, to prefer me to two places, in the Chief Justice of the Common Pleas, and then Keeper of his Great-Seal: I say it in the presence of God, I was far from the thought of the one, and from the ambition of the other, that if by His Majesty's grace and goodness had not been, I had never enjoyed those honours.

I cannot tell (*Mr. Speaker*), nor I do not know what particulars there are, that may draw me into your disavour or ill opinion, and therefore I shall come very weakly arm'd, yet to those that either in my own knowledge, or by such a knowledge as is given me, and not from any in this House, I shall speak somewhat, that I hope being truth, and accompanied with cleanness and ingenuity, will at last procure some ally of that ill opinion which may perhaps be conceived of me.

Mr. Speaker, I had once the honour to sit in the place that you do; from the first time I came thither, to this instant time, I do appeal to all that were here then, if I served you not with wisdom. Still after I never did any of the House's good offices I have sometimes enough I did many; I was so happy, that upon an occasion which once happened, I received an exposition and testimony of the good affection of this House towards me.

For the last unhappy day, I had great share in the unapprehended recovery of it. I hope there are not enough do remember, no man within the

walls of this House did express more symptoms of sorrow, grief, and dilatoriness than I did.

After an adjournment for two or three days, it pleased his Majesty to find for me, to let me know that he could not so relieve of things as he desired, and therefore was desirous that there might be an adjournment for some few days more. I protest I did not then esteem in his Majesty, and I believe it was not in his thoughts, so thick of the dissolving of this Assembly; but was pleased, in the first place, to give me a command to deliver his pleasure to the House for an adjournment for some few days, till the Monday following, as I remember, and commanded me withal to deliver his pleasure, that there should be no further speeches, but forthwith upon the delivery of the message come and wait upon him: he likewise commanded me, if questions were offered to be put upon my Allegiance I should not dare to do it. How much I did then in all humbleness reason with his Majesty, is not for me here to speak; only that much let me say, I was no Author of any counsel in it. I was only a person in receiving command; I speak not this, as any thing I now produce or utter, or take up for my own credit, but that which it knows to be true, and some honourable persons in this House, to be well true. All this I will say for that, it humbly to beseech you all to consider, that it is had been my own case, as it was mine, between the difficulties of a gracious King, and the ill opinion of an honourable Assembly, I beseech you lay all together, by my self address and behaviour in the last, I shall submit to your honourable and favourable construction.

For the Shipping business, my opinion of that cause hath been ever upon me; I shall clearly and truly present unto you what every thing I was, with the prosecution, that if as reckoning up my own opinion what I was of, or what I delivered, any thing of it be displeasing, or contrary to the opinion of this House, that I am far from justifying of it, but I think that and all other my actions to your wisdom and goodness.

Mr. Speaker, the first Writs that were sent out about the Shipping business, I had no more knowledge of, and was as ignorant as any one Member of this House, or any man in the Kingdom. I was never the Author nor Adviser of it, and will holdly say, from the first to this hour, I did never advise nor counsel the issuing forth of any Ship-Writs in my life.

Mr. Speaker, it is true that I was made Chief-Justice of the Common Pleas some four days before the Ship-Writs went out to the Ports and Maritime Places; as I do remember, the 29th of October 1634, they do bear title, and I was sworn Justice the 10th of October - so as they went out at that time, but without my knowledge or privacy, the God of Heaven knows this to be true.

Mr. Speaker, afterwards his Majesty was pleased to command my Lord Chief-Justice of the King's Bench, that then was, Sir Thomas R. B. (now Sir Thomas R. B.), and Chief-Baron of the Exchequer, that then he, and myself, then Chief-Justice of the Common Pleas, to take into consideration the Preamble then brought unto us, which we did, and after returned to his Majesty, what we had found out of their precedents.

It is true, that afterwards his Majesty did take into consideration, that if the whole Kingdom were concerned, that it was not reason to lay the whole burden upon the Cause Ports and Maritime Towns.

Thereupon, upon what ground his Majesty took that into his consideration, I do confess I do know nothing of it.

His Majesty did command my Lord Chief-Justice that then he, my Lord Chief-Baron, and myself, to return our opinion; Whether, when the whole Kingdom is in danger, and the Kingdom in general is concerned, it be not according to Law and Reason, that the whole Kingdom, and his Majesty, and all interceded therein, should join in deliberating and proceeding therein?

This was, in time, about 1634.

In November, then following, his Majesty commanded me to go to all the Judges, and require their opinion in particular.

He commanded me to do it to every one, and to charge them upon their duty and allegiance to keep it secret.

Mr. Speaker, it is as is mentioned by his Majesty (so professed by him) at that time, and he declared to all the Judges, that it was not required by him, to be such a binding opinion to the Subject, as to hinder him from calling it in question, nor to binding to themselves, but that upon better reason and advice they may alter it; but desired their opinions, for his own private reason.

I know very well, that extrajudicial opinions of Judges ought not to be binding.

But I did think, and speak my heart and conscience freely, myself, and the rest of the Judges being present, and by our Oaths and to counsel the King, when he should require advice of us, that we were bound by our Oaths and Duties to return our opinion.

I did obey his Majesty's command, and do here before the God of Heaven avow it.

* This Proceeding explains the manner of obtaining the Judges opinions in *Mr. Brouncker's Case* about 20th May, Vol. 8. pag. 483. as also the 1st Keeper's Refusal for want he gave to *Speaker* in the Parliament 1635, for which see, ante Page 217.

Also this had not been intended, his Majesty not putting in 20th Answer to the Articles entered against him.

I did never use the least promise of preferment or reward to any, nor did I use the least menace; I did leave it freely to their own Conscience and Liberty; for I was left to the liberty of my own by his Majesty, and had reason to leave them the liberty of their own Conscience.

And I believe you are pleased to have some belief, that I would not say this, but that I know the God of Heaven will make it appear, and I beseech you that extravagant speeches may not more against that which is a positive and clear truth.

Mr. Speaker, in the discourse of this (as is between Judges) some small discourses sometimes arise, yet never was any cause wherein any Judge considered, that were so little conference as between me and them.

Mr. Speaker, against a Negative, I can say nothing; but I shall affirm nothing unto you, but by the grace of God, as I affirm it to be true, so I make no doubt of making it appear to be so.

This opinion was subscribed without sollicitation; there was not any man of us, did make any doubt of subscribing our opinions, but two, Mr. Justice Hutton, and Mr. Justice Greke.

Mr. Justice Greke made not a scruple of the thing, but of the introduction, for it was thus:

That whereas the *Petiti* and the *Movitions* thereupon were presented, there according to the precedents in former times, the Courts lay on them.

So when the Kingdom was in danger, of which his Majesty was the sole Judge, whether it was not agreeable to Law and Reason, the whole Kingdom to hear the charge?

I left this case with Judge Greke.

The next Term I spoke with him, he could give me no resolution, because he had not seen the Writ in former times; but did give his opinion, that when the whole Kingdom was in danger, the charge of the defence ought to be borne by all.

So of that opinion of his, there was no need of a sollicitation.

I speak no more here, than I did openly in my argument in the *Eschequer-Chamber*.

This is the naked truth: for Mr. Justice Hutton, he did never subscribe at all.

I will only say this, that I was so far from pressing him to give his opinion, because he did ask me to consider of it, that I will boldly say, and make it good, that when his Majesty would have had him sometimes sent for, to give his opinion, I beseeched him Majesty to leave him to himself and his conscience; and that was the ill office I did.

The Judges did subscribe in *November* or *December*, 1635.

I had no conference, nor (truly I think) by accident any discourse with any of the Judges touching their opinions: for till *February*, 1636, there was no speech of it, for when they had delivered their opinions, I did return according to my duty to my Master the King, and delivered them to him, in whose custody they be.

In *February*, 1636, upon a command that came from his Majesty, by one of the then Secretaries of State, the Judges all assembled in *Gray's Inn*; we did then fall into a debate of the case then first unto us, and we did then return our opinion unto his Majesty; there was then much discourse and great debate about it.

More opinion and conference at that time was agreeable to that opinion I then delivered.

I did use the best arguments I could, for the maintenance of my opinion; and that was all I did.

It is true, that then at that time, Mr. Justice Hutton, and Mr. Justice Greke, did not differ in the main point, which was this:

When the Kingdom was in danger, the charge ought to be borne by the whole Kingdom.

But in this point, whether the King was the sole Judge of the danger, they differed.

So as there was between the first subscription, and this debate and consultation, four or fifteen months difference.

It is true, that all of them did then subscribe, both Justice Hutton, and Justice Greke, which was returned to his Majesty, and after published by my Lord-Keeper (my predecessor) in the *Eschequer-Chamber*.

For the manner of publishing it I will say nothing, but leave it to those, whose memories will call to mind what was then done.

The Reason of the subscriptions of Justice Hutton, and Justice Greke, (though they differed in opinion) grew from this, that was told them, from the roll of the Judges.

That where the greater number did agree in their vote, the rest were involved and concluded.

And now I have faithfully delivered what I did in that business, till I came (which was afterwards) to my argument in the *Eschequer-Chamber*; for the question was, *A jura facias* issued out of the *Exchequer* in that case of Mr. Hampden's; of which I can say nothing, for it was there begun, and afterwards returned, to have advice of all the Judges.

Mr. Speaker, amongst the roll (according to my duty) I argued the case. I shall not trouble you, to tell you what my argument was, I presume there are copies enough of it; only I will tell you there are four things, very briefly, that I then declared.

First, concerning the manner of danger, and necessity of the whole Kingdom.

I profess that there was never a Judge in the Kingdom did deliver an opinion, but that it must be in a case of apparent danger.

When we came to an argument of the case, it was not upon a matter of fact, but it was upon a matter of law.

Whether the danger was sufficiently admitted in pleading, and therefore was not the thing that was in dispute, that was the first degree and step that led unto it.

I did deliver myself as free and as clear as any man did, that the King was, to go on by the positive Laws of the Kingdom, that he could neither alter nor change, nor innovate in matters of Law, but by common consent in Parliament.

I did further deliver, that if it were used to make a further revenue to the King, or in any other way but in case of necessity, and for the preservation of the Kingdom, the judgment did warrant so forth thing.

My opinion in this business, I did in my conclusion of my argument submit to the judgment of this House.

I never delivered my opinion, that money ought to be raised, but Ships provided for the defence of this Kingdom, and as that the will was perverted.

And that the charge ought not to be in any case, but where the whole Kingdom was in danger.

And Mr. Justice Hutton, and Mr. Justice Greke, were of the same opinion with me.

I do humbly submit, having related unto you my whole carriage in this business, humbly submitting myself to your grace and favourable censure, beseeching you not to think that I delivered these things with the least intention to subvert or subvert the Common Law of the Kingdom, or to bring in, or to introduce any new way of Government; it hath been far from my thoughts, as any thing under the Heavens.

Mr. Speaker, I have heard too that there hath been some ill opinion conceived of me about *February* business, which was a thing far out of the way of my study, as any thing I know toward the Law.

But it pleased his Majesty, in the thickness of *May*, to give some short warning to prepare myself for that employment.

When I came there, I did both the King and Commonwealth acceptable service; for I did and dare be bold to say, with extreme danger to myself and conscience, (for as I understand by my meaning here) run thro' that business, and left the Forefe as much as was there.

A thing in my judgment, considerable for the advantage of the Commonwealth, as could be undertaken.

When I went down about that employment, I fancied myself about the matter of penalisation.

There were great difficulties of opinions, what penalisation was.

I did am myself as well as I could, before I did any thing in it.

I did acquaint those that were then Judges, in the presence of the noble Lords, with such objections I thought it my duty to offer unto them.

If they thought they were not objections of great weight as were fit to stir them, I would not do the King that dishonour.

They thought the objections had such answers as might well induce the like upon a conference with the whole Country, admitting me to come and confer with them, the Country did unanimously subscribe.

It fell out afterwards, that the King commanded me, and all this before I was Chief-Justice, to go unto *Essex*, and did then tell me he had been informed, that the bounds of the Forefe were narrower than in truth they ought to be, and I did according to his command.

I will here profess that which is known to many, I had no thought or intention of enlarging the bounds of the Forefe, further than *Hen. IV.* and that part about it, for which there was a penalisation about *26 Edw. IV.*

I desired the Country to confer with me about it, if they were pleased to do it; and then according to my duty, I did produce those Records which I thought fit for his Majesty's service, leaving them to discharge themselves by Law and Justice, they might do.

I did never, in the least kind, go about to overthrow the Charter of the Forefe.

And did publish and maintain *Charte de Foresta*, as a sacred thing, and no man to violate it, and sought to be preferred for the King and Commonwealth.

I do in this humbly submit, and what I have done, to the Goodness and Justice of this House.

(*Mr. Raynolds* says, many were exceedingly taken with his Eloquence and Carriage, and it was a sad sight to see a Person of his greatness, parts and favour, to appear in such a posture, before such an Assembly, to plead for his Life and Fortunes.)

After his Lordship was retired, it was moved that this addition of the Lord-Keeper, might not be drawn into precedent; and in answer to what his Lordship said, Mr. Rely made this following speech.

Mr. Speaker,

Though my judgment prompts me to be still and be silent, yet the duty I owe to my King, my Country and my Conscience, move me to stand up and speak.

Mr. Speaker, had not this Syce so sweet a tongue, surely he could never have effected so much mischief to this Kingdom: you know, Sir, *epitaphum patris patris*, the best things purchased become the worst: and so it is in the natural, in the body politic; and what is to be feared then, Mr. Speaker, we all know *epitaphum* in the second, Justice said *hinc, ne per secula trahatur*.

Mr. Speaker, it is not the voice, we see fit out, nor the tongue, but the heart and actions that are to be suspected: for doth not our Saviour say it, *Stem me by the words of thy mouth, O man*? (*St. James*, not our Saviour's faith it.) Now, Mr. Speaker, hath not this Kingdom been, (*scen*, say it) say it and framed under the cruelty of this man's Justice? so malicious as to record it in every Court of *Highway*; as if he had not been contented with inflicting of us all, unless he created it to all posterity.

Why shall I believe words now, *iam factum videtur*? Shall we be to seek men, at when we have been injured and abused, will be galled again with false and compassions? Or, have little children, whom we have been whipt and beaten, be pleased again with treatment? Oh no, those be worse birds in the fennet of Parliament will say falsely, who in the winter of persecution, will for their prey now do it at all, upon our goods, may freeze upon our persons; and hath it not been with this man so, with some in that *Admalty*?

Mr. Speaker, it hath been objected unto us, that in judgment you should think of mercy, and be merciful as your heavenly Father is merciful; now God Almighty grant that we may be so, and that our hearts and judgments may be truly rectified to know truly what is mercy: I say to know what is mercy; for there is the point, Mr. Speaker: I have heard of foolish pity, foolish pity; do we not all know the effects of it? And I have met with the epistle to mercy, *videtur misericordia*, and in some kind I think there may be a cruel mercy: I say so, that the Spirit of God lead, Be not proud as judgment, my faith, not pitiful of the poor in judgment; if one of the poor, then, *deus*, not of the rich; there's the emphasis. We see by the set and intent appointment of our Courts of Justice, what provision the wisdom of our ancestors hath made for the preservation, honour, and esteem of Justice; witness our frequent Terrible sessions, and Assizes, and in what pomp and state the Judges, in their Circuits, by the Sheriffs, Knights and Justices, and all the Courts are attended off-times for the hanging of a poor Thief for the stealing of a Hog or a Sheep, say in some cases for the heading of a penny, and Justice too as terrible; and now shall not some of them be hanged and have robbed as of all our property, and shared at once all our sheep?

and all we have away, and would have made us indeed poor *Belshazzars* had we begged for half-pennies, when they would not have left us one penny that we could have called our own?

Let us therefore now, *Mr. Speaker*, not be so pitiful as that we become *remiss*; it is not painful in judgement, as to have no judgement; but let the deplorable effect of *Great Britain* now before our eyes, and consider how our most gracious Sovereign hath been abused, and both his Majesty and all his Subjects injured by these wicked influences; for which my humble motion is, that with this particular we become now as mercurial as to the gentility (the whole Kingdom) to grow mercurial.

Fiat Justitia.

Whereupon he was the same day voted a Traitor, upon the following particulars:

1. For refusing to read the remonstrance against the Lord-Treasurer *Wylls*, a *Cor.* when the Parliament desired it.

2. For soliciting, persuading, and threatening the Judges to deliver their opinion for the levying of Ship-money.*

3. For several illegal alights in *Parliam.* matters.

4. For ill offices done, in making the King dissolve the last Parliament, and causing his declaration thereupon to be put forth.

Whereupon it was resolved upon the quest on.

That *Yoh. Lord Finch*, Baron of *Fordewich*, Lord-Keeper of the Great Seal of England, shall be accused in this House, in the name of all the Commons of England, of High-Treason, and other great Misdemeanors.

Refused.

That a message be sent by the Lord *Folliard*, to accuse *Yoh. Lord Finch*, Baron of *Fordewich*, Lord-Keeper of the Great Seal of England, in the name of this House, and all the Commons of England, of High-Treason, and other great Crimes and Misdemeanors; and to desire that he may be forthwith impeached from Parliament, and be committed; and that in some convenient time this House will refer to their Lordships, with particular Accusations and Articles against him.

The next morning, the 22d, the Lord-Keeper (considering with what impetuosity and violence every thing was managed) got up early, and escaped in disguise into *Holland*, from whence he wrote a Letter to the Lord-Chamberlain, dated from the *Hague*, January 3, 1640.

My most beloved Lord,

THE Interest your Lordship both ever had in the best of my fortunes and misfortunes, gives me the privilege of troubling your Lordship with these few lines, from one that hath seeking late to force you whilst but his prayer; I thank your Lordship that never fail of, with an heart as full of true affection to your Lordship as ever was my. My Lord, it was not the loss of my life, and with this of my fortunes, nor being called from my dear Country and Friends, though many of them were cause of sorrow, that affects me, but that which I must suffer under it, the dissolution of the House of Commons conceived against me. I know a true heart I have ever been towards them, and your Lordship can witness in part, what ways I have used in that silence and patience but becomes me, with which I will leave myself and my actions to the favourable constructions of my noble Friends, in which number your Lordship hath a prime place. I am now at the *Hague*, where I arrived on *Thursday* the last of the last month, where I purpose to live in a fashion agreeable to the passions of my fortunes; for my humbling in this World, I have utterly cast off the thoughts of it, and my aim shall be to learn to number my days, that I may apply my heart to religion, that affliction that has swept away all joys from my eyes and heart, and lead me by the hand to true happiness, which can never be taken from me. I pray God of Heaven to bless this Parliament, both with a happy progress and conclusion; if my ruin may conduce but the least to it, I shall not regret it. I truly pray for your Lordship and your noble Family, that God would give an increase of all worldly blessings, and in the fulness of days to receive you to his Glory; if I were capable of serving any body, I would all your Lordship, that no man should be readier to make known his devotion and true gratitude to your Lordship, than

Your Lordship's most humble,

and most affectionate,

your Kinsman and Servant,

J. FINCH.

Jan. 14. The Committee having prepared Articles of Impeachment against the Lord-Keeper, they were presented to the House, and are as follow:

The Accusation and Impeachment of John Lord Finch, Baron of Fordewich, Lord-Keeper of the Great Seal of England, by the House of Commons.

Imprimis, THAT the said *Yoh. Lord Finch*, Baron of *Fordewich*, Lord-Keeper, &c. hath traitorously and wickedly endeavoured to subvert the fundamental Laws and established Government of the Realm of England, and instead thereof to introduce an arbitrary, tyrannical Government against Law, which he hath declared by traitorous and wicked words, equivoals, opinions, judgments, practices and actions.

II. That in parliament of these his traitorous and wicked purposes, he did in the third and fourth year of his Majesty's reign, or one of them, being then Speaker of the Commons House of Parliament, contrary to the commands of the House then assembled and sitting, deny and hinder the reading of some things which the said House of Commons required to be read, for the safety of the King and Kingdom, and preservation of the Re-

ligion of the Realm; and did forbid all the Members of the House to speak, and said that if any did offer to speak, he would rise and go away, and said nothing should be done in the House; and did offer to rise and go away, and did thereby and otherwise, as much as in him lay, endeavour to subvert the ancient and undoubted rights and course of Parliament.

III. That the being of his Majesty's Council at the Justice Seat, held for the County of *Essex*, in the month of *October*, in the sixth year of his now Majesty's reign, at *Stratford-Langton* in the same County, being then of his Majesty's Council, in that service did practise by unlawful means to enlarge the Forest of that County many Miles beyond the known bounds thereof, as they had been enjoyed near 500 years, contrary to the Law and to the Charter of the liberties of the Forest, and other Charters and *divers* Acts of Parliament; and for effecting the same did unlawfully cause and procure undue return to be made of Jurors, said great numbers of other persons who were unknown, to be joined to them of the Jury, and threatened and used the said Jurors to give a verdict for the King, and by unlawful means did surprise the County, that they might not make defence, and did use several menacing wicked speeches and actions to the Jury and others, for obtaining his unjust purpose aforesaid. And after verdict obtained for the King in the month of *April* following (at which time the said Justice-seat was called by adjournment), the said *Yoh. Lord Finch*, then Lord Chief-Justice of his Majesty's Court of *Common-Pleas*, and one of the Judges assizes for them; he continued by further unlawful and unjust practices, to maintain and confirm the said verdict, and did then and there, being assize to the Justice in *Essex*, admit the refusal of the transference of the County, and all their evidences, but only what they should verbally deliver, which was refused accordingly.

IV. That he about the month of *November*, 1635, being then Lord Chief-Justice of the *Common-Pleas*, and having taken an Oath for due administration of Justice to his Majesty's liege people, according to the Laws and Statutes of the Realm, contrived an opinion in *law* wrote, (when the good and sober, &c. *Edw. State-Treaty*, Vol. I.) and did subscribe his name to that opinion, and by perswasions, threats, and false suggestions, solicited and procured Sir *Yoh. Bramhall*, Knight, then and now Lord Chief-Justice of *England*; Sir *Hamphrey Dunsford*, Knight, Lord Chief-Justice of his Majesty's Court of *Exchequer*; Sir *Richard Hutton*, Knight, late one of the Justices of his Majesty's Court of *Common-Pleas*; Sir *Yoh. Darnley*, Knight, late one of the Barons of his Majesty's Court of *Exchequer*; Sir *William Jones*, Knight, late one of the Justices of the said Court of *King's Bench*; Sir *George Coke*, Knight, then and now one of the Judges of the said Court of *King's Bench*; Sir *Thomas Temar*, Knight, then and now one of the Barons of the *Exchequer*; Sir *George Fennes*, Knight, late one of the Justices of the said Court of *Common-Pleas*; Sir *Robert May*, Knight, then and now one of the Justices of the said Court of *King's Bench*; Sir *Francis Croxall*, Knight, then and now one of the Justices of the said Court of *Common-Pleas*; Sir *Richard Wylls*, Knight, then and now one of the Barons of the said Court of *Exchequer*, some or use of them to subscribe, with their names, the said opinion presently, and enjoined them feverally some or one of them secrecy, upon their Allegiance.

V. That he the fifth day of *June*, then being Lord Chief-Justice of the said Court of *Common-Pleas*, subscribed an extrajudicial opinion in answer to question in a Letter from his Majesty, in her words, &c. Vol. I. page 487.

And that he contrived the said question; and procured the said Letter to his Majesty: And where the said Justice *Hutton* and Justice *Coke* declared to him their opinion to the contrary, yet he required and perilled them to subscribe, upon his promise that he would let his Majesty know the truth of their opinions, notwithstanding such falsifications; which nevertheless he did not make known to his Majesty, but delivered the same to his Majesty as the opinion of all the Judges.

VI. That he being Lord Chief-Justice or the said Court of *Common-Pleas*, delivered his opinion in the *Exchequer-Chamber* against Mr. *Hampden* in the case of Ship-money; that he the said Mr. *Hampden* upon the matter and substance of the case was chargeable with the money then in question; a Copy of which proceedings the Commons will deliver to your Lordships: and did solicit and threaten the said Judges, some or one of them, to deliver their opinions in like manner against Mr. *Hampden*. And after the said Baron *Dunsford* had subscribed to the said Mr. *Hampden*, the said Lord Chief-Justice purposed to the said Baron *Dunsford* Chamber in *Stratford-in-Avon* in *West-Midland*; and after the said Mr. Baron *Dunsford* had declared and expounded his opinion, urged him to retract the said opinion; which he refusing, was threatened by the said Lord Chief-Justice, because he refused.

VII. That he being then Lord Chief-Justice of the Court of *Common-Pleas* declared and published in the *Exchequer-Chamber* and *West-Midland* circuit what he went Judge; that the King's right to Ship-money, as aforesaid, was so inherent a right to the Crown, as an Act of Parliament could not take it away; and with divers malicious speeches inveighed against, and threatened all such as refused to pay Ship-money: all which opinions contained in the fourth, fifth and sixth Articles, are against the Law of the Realm, the Subjects right of property, and contrary to former resolutions in Parliament, and to the Petition of Right, which said resolution and Petition of Right were well known to him referred and read in Parliament, when he was Speaker of the Commons House of Parliament.

VIII. That he being Lord Chief-Justice of the Court of *Common-Pleas* did take the general practice of that Court to his private chamber; and that he sent warrants into all or many Shires of England to *seize* men, as so *Francis Glyn* of the County of *Devon*, *Robert Brydon* of the County of *York*, Attorneys of that Court, and to divers others, to *seize* *£100* persons arrested on any outlawry for about forty Shillings fees; whereas now by Law so arrested can be bailed or released without superfluous under *£10*, or reversal.

* Lord *Carleton* in his History, Vol. I. pag. 71. (See Edition) says, Undoubtedly my Lord *Finch* spoke in the *Exchequer-Chamber* made Ship-money much more abhorred and formidable than all the Commissions by the Council-Table, and all the Directives taken by the Sheriffs in England, &c. pag. 74. 75. he took up Ship-money while Sir *Yoh. Finch* was a more extraordinary abettor in the People, upon the behalf of Ship-money; and says of reputation and Authority enough to convince and advance the King's Service. Lord *Carleton*'s History, Vol. I. pag. 171. in 170.

† Sir *Yoh. Finch* was a more extraordinary abettor in the People, upon the behalf of Ship-money; and says of reputation and Authority enough to convince and advance the King's Service. Lord *Carleton*'s History, Vol. I. pag. 171. in 170.

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IX. That he being Lord Chief-Justice of the Court of Common-Pleas, upon a pretended suit begun in *Milbourne-Term*, in the fifth year of his Majesty's reign, although there was no plaint or declaration against him, did notoriously, and contrary to all Law and Justice, by threats, menaces, and importunities, compel *Thomas Lawrence*, an Executor, to pay nineteen pious twelve shillings; and likewise caused *Richard Bernard*, being only Over-see of the last Will of that Testator, to be arrested for the payment of the said money, contrary to the advice of the rest of the Judges of that Court, and against the known and ordinary course of Justice, and his said Oath and Knowledge; and denied his Majesty's subjects, the common and ordinary Justice of this Realm, as to Mr. *Lewis*, and others; and for his private benefit endangered and ruined the estate of very many of his Majesty's subjects, contrary to his Oath and Knowledge.

X. That he being Lord-Keeper of the Great Seal of England, and sworn one of his Majesty's Privy-Council, did by false and malicious flanders libelously to incense his Majesty against Parliament, and did frame and advise the publishing the Declaration after the dissolution of the last Parliament.

All which Treasons and Misdemeanours above-mentioned, were done and committed by the said John Lord Finch, Baron of *Perthuis*, Lord-Keeper of the Great Seal of England; and thereby he the said Lord Finch hath notoriously, and contrary to his Allegiance laboured to lay imputations and scandals upon his Majesty's Government, and to alienate the hearts of his Majesty's loyal People from his Majesty, and to set a division between them, and to ruin and deface his Majesty's Realm of England, for which they the said Lord Finch, and England, of High treason against his Majesty's Majesty Lord the King, his Crown and Dignity, of the Misdemeanours above-mentioned. And the said Court by its jurisdiction, having to themselves the liberty of exhibiting, at any time hereafter, any other accusation or impeachment against the said Lord Finch, and also by virtue of the proviso, that the said John Lord Finch shall make answer the said division, or in any other kind of offering proof of the premises, or any of other imputations or accusations that shall be exhibited by them, in the said trial, according to the course of Parliament, require it, that the said John Lord Finch, Baron of *Perthuis*, Lord-Keeper of the Great Seal of England, may be put to answer to all and every of the premises, and just Proceedings, Executions, Trials, and Judgments, as may be upon every of them, had and used, as is agreeable to Law and Justice.

After reading these Articles, resolved upon the Question,

That these Articles thus read and ingross'd shall be sent to the Lords, in maintenance of the Commons charge against John Lord Finch of *Perthuis*, late Lord-Keeper of the Great Seal of England.

Mr. *Arthur Goudon* is appointed to go up with a message to the Lords to a conference with their Lordships, by a Committee of both Houses, concerning Articles to be deliver'd in maintenance of the Commons accusation of John Lord Finch of *Perthuis*, late Lord-Keeper of the Great Seal of England; and concerning the liberty and property of the subject.

As the request of the Lord *Folkeham*, Mr. *Hyde* is appointed to be assistant unto him, for the reading of the Articles to be deliver'd against the late Lord-Keeper.

Mr. *Gowen* brought answer, that according to the order of this House, he had deliver'd the message to their Lordships, and their Lordships will give meeting to-morrow morning, at nine of the Clock, by a Committee of the whole House, as is desired.

Accordingly the Articles against the Lord-Keeper were presented to the Lords; and after reading the same, the Lord *Folkeham* spoke as follows:

My Lords,
THESE Articles against my Lord Finch being read, I may be bold to apply that of the Poet, *Nihil refert verba sua quis legator;* and I doubt not but your Lordships may be of the same opinion, of which the House of Commons appears to have been, by the choice they have made of me, that the charge I have brought is such, as needs no assistance from the binger, leaving yet to me such as the colour of a colour for my defence, including all possible evidence, and all possible aggravation (that addition alone excepted) which he alone could make, and hath made; I mean, his confessions included in his right.

Here are many and mighty Crimes, *Crimes of Supererogation*, (so that High-Treason is but a part of his charge) pursuing him feverently in every several condition, (being a silent Speaker, an unjust Judge, and an unconfessable Keeper). That his life appears a perpetual warfare (by mines, and by battery, by battle, and by stratagem,) against our fundamental Laws, which (by his own confession) several Consequels hath left untouched, against the excellent constitution of this Kingdom, which hath made it appear arms through rather an Idea, than a real Commonwealth, and polluted the honour and splendour of this to be a wonder of every other Nation; and then with such unbecoming success, that as he always intended to make our ruin a ground of his advancement, so his advancement the means of our further ruin.

After that, contrary to the further end of his place, and the ending of that meeting in which he held his place, he had, as it were, gag'd the Commonwealth, taking away (to his power) all power of speech from that Body, of which he ought to have been the mouth, and which alone can perfectly represent the condition of the People, whom they only represent: which if he had not done, in all probability, what is grave and judicious an Assembly might have offered to the consideration of so gracious and just a Prince, had occasioned the redress of the grievances they then suffered, and permitted the things which they have since endured, according to the ancient maxim, *Quid quis loquitur*. He pursued this officer towards the Parliament, by invading against the Members, by scandalizing their proceedings, by compelling upon their Acts and Declarations, by usurping and depriving the right, by diminishing and abrogating the power, both of that and other Parliaments, and making them (as much as in him lay) both useless and odious to his Majesty; and pursued his hatred to this fountain of Justice by corrupting the streams of it, the Laws, and perverting the conduct-pipes, the Judges.

He profaned the sanctification of ancient and serious perambulations of particular Forests, the better to prepare himself to annihilate the as-

cient and serious perambulation of the whole Kingdom, the more and boundaries between the liberties of the subject and invasive power; he endeavoured to have all terrors *domestically*, by bringing all Law from his Majesty's Courts into his Majesty's breast; he gave our goods to the King, our lands to the Door, our liberties to his Sheriffs; so that there was no way by which we had not been appalled, and destroyed, if the power of this period had been equal with his will, or that the will of his Majesty had been equal to his power.

He not only by this means made us liable to all the effect of an Invasion from without, but (by destruction of our liberties, which included the destruction of our property, which included the destruction of our industry) made us liable to the torments of all invaders, that of want and poverty. So that if what he plotted had taken root, and he made it, as sure as his Declaration could make it, (what himself was not, *Parliament-proof*) in this wealthy and happy Kingdom, there could have been left no abundance but of grievances and discontentment, no satisfaction but amongst the guilty. It is generally observed of the Plague, that the infection of others is as carnal, and constant desire of all that are seized by it; and as this design resembles that disease, in the ruin, destruction, and desolation it would have wrought, so it seems no less like it in this effect: he having so laboured to make others share in that guilt, that his satisfaction was not only his action, but his works, making use both of his authority, his interest, and importunity, to persuade, and in his Majesty's name (whose Fief is known to give that excellent prerogative to his Person, that the Law gives no place, nor to be able to do wrong) to threaten the rest of the Judges, to sign opinions contrary to Law, to sign answer contrary to their opinions, to give Judgment which they ought not to have given, and to recant Judgment when they had given it as they ought: so that whoever considers his case, and concernment, both in the growth and in the immortality of this project, cannot but by the same way, by which the wisdom judgment found the true mother of the Child, discover him out only to have been the seltier, but the father of this most pernicious and curious design.

I shall not need to observe, that this was plotted and pursued by an Englishman against England, (which increased the Crime no less degree than Paricide is beyond Murder) that this was done in the greatest manner joined to the greatest bond, being against the general Liberty, and public property, by a sworn Judge (and if that fell ill, because unfavourable, the Gospel hath design'd whether it may be call) that he poisoned every antipathy, and turned our guard into a destruction, making Law the ground of illegality, that he used this Law not only against us, but against itself, making it, as I may say, *Fals de Jure*, making the presence (for I can scarce say the appearance of it) to be contributory to the utter ruin of itself.

I shall not need to say, that either this is (or can be) of the highest kind, and in the highest degree of Parliamentary Treason, a Treason which needs not a comparison of many former actions, which alone were Treason, to prove a Treason all together, and by that demonstration of the intention, to make that formally Treason which were materially but a misdemeanor: this is a Treason as well against the King, as against the Kingdom; for whatsoever is against the whole, is undoubtedly against the Head, which takes from his Majesty the ground of his rule, the Laws, (for if foundations be destroyed, the pinacles are most endangered) which takes from his Majesty the principal honour of his rule; the ruling over Freeman, a power as much nobler than that over Villains, as that than that over Beasts, which endeavoured to take from his Majesty the principal support of his rule, their hearts and affections over whom he rules; (a better and fairer through and wall to the King, than the first is to the Kingdom;) and by beggaring a mutual distrust, and by that a mutual detestation between them, to hazard the danger even of the destruction of both.

My Lords,
I shall the less need to press this, because as it were unreasonable in any case to suspect your Justice, so here especially, where your interest is nearly united to you; your great share in positions, giving you an equal concernment in property, the more said pains used by your noble Ancestors in the founding and settling of our common liberties rendering the just defence of them your most proper and peculiar inheritance, and both exciting to oppose and extirgate all such designs as did introduce, and would have scolded an arbitrary, that is, an intolerable form of Government, and have made even your Lordships and your posterity but Right Honourable Slaves.

My Lords,
I will spend no more words, *hactenus cum loquor*, in accusing the Ghost of a departed Prince, whom his Crimes accuse more than I can do, and his absence accuseth no less than his Crime. Neither will I excuse the length of what I have said, because I cannot add to an error, without adding to the fault, or my own impotency, either in the matter or manner of it; which I know must appear the greater, by being compared with that blessed Gentleman's great ability, who hath preceded me at this time: I will only define, by the command, and in the behalf of the House of Commons, that their proceedings against the Lord Finch may be put in so speedily a way of dispatch, as in such cases the course of Parliament will allow.

The same day, the Commons order'd thanks to be returned from the House to Mr. *St. John*, Mr. *Widdall*, the Lord *Folkeham*, and Mr. *Hyde*, for the great service they have perform'd to the honour of the House, and good of the Commonwealth, in the translating the Articles against the late Lord-Keeper.

Jan. 30. It was ordered by the Lords, that such Judges as the House of Commons shall desire, are to be examined in the case of the Lord Finch, by the same departed Lords as were appointed in the case of *Stratford* before: but the Judges are not to be examin'd upon any thing to accuse themselves.

Feb. 15. The House of Lords thought fit, that a Proclamation should issue out to summon the Lord Finch, late Lord-Keeper, personally to appear before

One other whereof purporteth a fine pretended to be levied at *St. Alben's* in the Parish of *St. Alben's* in the County of *Essex*, between *James Morris*, Esq. *John Morris* alias *Pope*, his Son, *Plaintiffs*; and *Gabriel Pope*, Esq. and *William Cocks*, Esq. Defendants; of four Messuages, in *Garlicks*, and two Acres of Land with the appurtenances, in the Parish of *St. Katherine* *Great Church*, *London*.

One other of the said Parchment writings purporteth a pleading, setting forth the acts of the said fine, and beginning in these words, (viz.) *Eliza. R. In memorandis de Banco, Anno triginta octavo Elizabethæ, viz. inter Ricard. Terminis Sancti Trinitatis Rollo xxi. ex parte Remissionem in Tor. munc. inter alia contineat ut sequitur, viz. Memorandum quod super inuentione in gradibus Rollo retro, de fidei et ipsi Banco in Terminis Sancti Michaelis, anni Regni Domine regine Elizabethæ, triginta octo et septima, quod Gabriel Pope, Esq. &c.*

And one other whereof purporteth a Copy of a pretended Act of Parliament, intituled, *Act to make and make good a surveyance and assurance, made of the Manor of Chipping-Ongar, Northoltenden, Southtenden, and other Lands in the County of Essex; and Beavers-Marks about Bevers-Marks in London*; by *James Morris*, Esq. and *Gabriel Pope*, Esq. in *John Morris* alias *Pope*, and his Heirs, and to give the said fine where the said *John Morris* alias *Pope*, and his Heirs, according to the said conveyance: Are hereby declared to be forged and counterfeited, and are by their Lordships adjudged and decreed to be for ever damned and cancelled, and never to be pleaded, or admitted to be given in evidence in any Court, or Cause whatsoever: there being no Record of any such Fines, Pleading, or Act of Parliament to warrant the same; nor any Term then held at *St. Alben's*, when the said fines were pretended to be levied there.

And it is further ordered by the Lords in Parliament assembled, that the said *John Morris* shall by the 29th of November next bring, or cause to be brought into this House, the Copies of the said Parchment writings, (pretended to be found in the Treasury of the Court of Wards) fabricated by the said *John Morris*, that to the same may be cancelled and vacated.

John Brown, Cler. Parliamentum.

Eliza. R. In memorandis de Banco, Anno triginta octavo Elizabethæ, viz. inter Ricard. Terminis Sancti Trinitatis Rollo xxi. ex parte Remissionem in Tor. munc. inter alia contineat ut sequitur, viz.

"*Memorandum quod super inuentione in gradibus Rollo extra. de fidei et ipsi Banco et Terminis Sancti Michaelis anni Regni Domine regine Elizabethæ, triginta octo et septima, quod Gabriel Pope, Esq. fecit cum predicta Domina Regina licet, pro concordia cum Jacobo Morris, Esq. et alio de Plito concidit. de Manor Chipping-Ongar, alias Anger ad Cullum, cum appurtenant. &c.*"

5 Novemb. 1647.

I have searched the Records of the Common-Pleas, de Terminis Sancti Trinitatis, Anno triginta octavo Reg. Elz. Rollo triginta prima, and do find that there is no inrollment of any such Record there, as is above-mentioned. Per *Johannem Cocks*, Cleric. Theſaur. de Com. Reven.

I have searched in the Treasurer's Remembrances Office in the Exchequer, amongst the Records of Trinity-Term, Anno xxviii. Regine Elizabethæ. Rollo xxi. but do not find that there is any such Record or Inrollment, as is above-mentioned.

T. Oshorne.

6 Mar. 1647.

Memorandum, that I *Francis Blake*, Keeper of the Books for the searchers of fines, and of the Records thereof in the Chirographer's Office, have made diligent search in the said Books, and amongst the said Records of Michaelmas-Term, 35 and 36 Elz. and all the Terms after, till Hilary 38 Elz. and I can find no fine at all from *Gabriel Pope* and *William Cocks*, or either of them, to any person whatsoever, of any Lands in the Counties of *Essex* or *London*. And moreover, I find by the said Records, that *Michaelmas-Term*, 36 and 37 Elz. was held at the City of *Windsor*, and not at the Town of *St. Alben's*. All which I do hereby (at the request of *Sir Adam Pope*, alias *Lindset*, Bart.) certify to all whom it may concern.

F. Blake.

Here ends the Proceedings of the Lords against them.

Soon after a short Breve of Mr. *John Morris's* case was drawn up, and delivered to his Excellency *Sir Thomas Fairfax*, by divers of the Parliament's Agents.

May is pleasy your Excellency,

BEING deeply oppressed in our spirits, and overburdened in ourselves, at the manifold and doleful outcries and complaints of the people, in all parts of our quarters where we come, uttered against the daily oppressions and

Intrusions that are made by prerogative and arbitrary violence upon their common rights; and in particular, the cry and miserable mean of certain oppressed Commons, to wit, of *John Pope*, alias *Morris*, Esq. *Isabel Smith*, *John Harris*, and *Lamard Dury*, coming unto our ears, that we could not, but (as in duty we are bound) deeply reprobate their miserable condition, as follow-ers of their oppressions, and persons liable (when we come into their high capacity of Commons) to the said mischief, and therefore conceiving it our duty to contribute our utmost endeavours to the remedy of the same, we could not but undertake in some measure our duty unto your Excellency in their behalfs, who in such a hard and barbarous manner have been abused and supplanted of their common rights, by acts of violence and force, committed by *John Brown*, Clerk at n. s. House of Lords, and his accomplices, under the colour of several orders (unlawfully by misinterpretation gained from the said House, to the high usurpation and abuse of the name and authority of Parliament, in permitting the image thereof upon his own prerogative, outrage and violence, to the total ruin and supplantation of the just freedoms, and birthright inheritance of the said persons, as the several papers therewithal (submitted, for the full information of your Excellency, do demonstrate). And for more certain confirmation of our premises, signified by the same, he pleased to consider, that whereas the above-said persons are accused, condemned, and sentenced by the Lords (surprized by *Brown's* misinterpretations and delusions) to pay 3500*l.* fine, and suffer imprisonment, contrary to the regular course of the Law, during the pleasure of the said House, for forging and framing a copy of an Act of Parliament, touching the estate of the said *John Pope* alias *Morris*, pretended to be taken out of the Office of the said *John Brown*, with his hand thereto; so such original Record as *Brown* pretendeth is to be found in his Office: that since the said accusation, another original Record of the said Act of Parliament, with other writings and evidences for the said estate, is found in the Court of Wards, and they have caused copies thereof, examined and falsified by the Master of the said Court and his Clerks, the which, with their hands thereto, are herewith presented; and concerning the truth thereof, three of us can also give it upon Oath, that the wit. of one *Geoffrey Cade*, now prisoner in the Fleet, did declare unto us, that the said *John Brown* went to the Fleet unto her husband, and gave him twenty-five shillings in hand, and promised him five pounds more, and his inheritance, so far as the Lords had, that he forged the copy of the said Act of Parliament, and counterfeited the Clerk's hand unto it, and the said *Cade* did also confess the same.

Wherefore we humbly implore that your Excellency would be pleased to grant the said distressed persons your letter of request unto the Parliament, according to their Petition, herewith directed to your Excellency, that the said persons, and their adversaries, may be left to the free course and trial at Common Law; and that in the mean time, till the controversy concerning the estate be decided at Law, the said persons may enjoy their enlargement upon bail, without any further trouble or damage, and the execution of their severe sentence be suspended, and the said *Pope*, alias *Morris*, enjoy peaceable possession of the said estate, like as all his ancestors, from the days of *Queen Elizabeth*, have done before him. Which request is so reasonable and just, and their condition so miserable, desperate, and dangerous, and of such concernment to the whole Commonwealth, that no man, if such enhancements be not stopp'd and curb'd, can have any security in his estate or liberty, that we cannot but promise to ourselves your Excellency's commendation of their condition, and readily assist unto their just suit. Thus we humbly take our leave, beseeching your favourable consideration upon our petitions, and remain

Your Excellency's most humble

	Servants and Soldiers,
Lieut. Gen. R.	<i>Robert Enard.</i> <i>George Sailer.</i>
Com. Gen. R.	<i>George Gurn.</i> <i>Thomas Birch.</i> <i>Martha Wally.</i> <i>William Ryfel.</i> <i>William Somps.</i> <i>Richard Dury.</i>
Col. Whaly's.	<i>William Hodgins.</i> <i>John Debr.</i>
Col. Rich's.	<i>William Prior.</i> <i>John Debr.</i>
Col. Richmond's.	<i>William Bryan.</i>

But I don't find any thing farther done in this business.

XXIII. The Trial of Col. JOHN MORRIS Governor of Pontefraet Castle; at the Assizes at the Castle of York, before Mr. John Puleston, and Mr. Baron Thorpe, Justices of Assize, the 16th of August, Anno Dom. 1649, for High-Treason.

COLONEL *Morris* being demanded to hold up his hand, refused, and the Indictment was read against him for Treason, for leaving War against the late King and the Parliament, upon Stat. 25 El. III. The Court desired him to plead Guilty, or not Not Guilty. Col. *Morris*. My Lords, under censure, I conceive this Court hath

not power to try me in this case, I being a martial man, I ought to be tried by a Council of War.

Court. Sir, What do you say, are you guilty or not Guilty? This is the second time you have been asked: Sir, if you will not answer the third time, we shall know what to do. Are you guilty or not guilty?

Col.

Col. Morris. My Lords, I still conceive I ought not to be tried here; if I have done any thing worthy of death, I appeal to a martial Court; to my Lord Fairfax, Major-General, or a general Council of War: you have not any precedent for it, either for you to try me in this way, or me to suffer by it.

Court. Are you guilty or not guilty? This is the third time.

Col. Morris. My Lords, if your Honours will force me to plead, I conceive I am not guilty.

Court. How will you be tried?

Col. Morris. My Lords, I was never at any Bar before, I am ignorant how.

Court. Tell him what to say. [Upon that, some near him, told him, by God and his Country.]

Col. Morris. By God and my Country. [After that, challenge is made for Col. Morris to except against any of the Jury.] Mr. Beuclerk, a great man for the cause, says first rational, to be sworn as Foreman of the Jury.]

Col. Morris. My Lords, I except against this Bench.

Court. Sir, he is sworn, and you speak too late.

Col. Morris. My Lord, I appeal to himself, whether he be sworn or no. Mr. Beuclerk, Sir, I am not to answer you, but the Court. My Lord, I do not talk the Book.

Court. Sir, that is no matter, it's but a ceremony.

Col. Morris. My Lords, I beseech your Honours that I may except against him, I know him, as well as I know my right hand, to be my enemy.

Chief of Affairs. Sir, he is recorded foreman, there is no disputing against the Record.

Col. Morris. My Lords, I must submit to your Honours. [After that Col. Morris challenged to men, and my Lord Paynter, thinking Col. Morris tedious in excepting against so many, answer'd, Sir, Keep within your compass, or I will give you such a blow as will shake off your head.]

Col. Morris. My Lords, I desire nothing but Justice; for by the Statute of 24 Hen. VII. fol. 10. I may lawfully challenge thirty-five men, without showing any cause to the contrary.

Court. It is granted. After a full Jury, the Lieutenant read, and Evidence for the State very full, that Col. Morris was Governor of Penryn; which, Morris being very modest and civil, did not contradict any thing, until his time of answer.

Col. Morris. My Lords, I humbly desire a Copy of my Indictment, that I may know what to answer; I conceive I may plead special as well as general.

Court. Sir, you cannot by Law.

Col. Morris. My Lords, I conceive there is a point of Law in it, and I humbly desire to have Counsel; for I conceive by the Law, being arraigned for High-Treason, I ought to have Counsel by the Statute 24 Hen. VII. fol. 13.

Court. Sir, I tell you, you cannot have it.

Col. Morris. Then, my Lords, I conceive I am not any way guilty of the Indictment for Treason. My Lords, it is said to be against the King, his Crown, and against his Peace; whereas, my Lords, I can make it appear, I was only used by the Kings, and nothing against him, which may appear by my Commission. The Court looks upon it, and answers,

Court. Sir, you are deceived, this is false, it is from the Prince.

Col. Morris. My Lords, it is very well known, my Lord Fairfax hath his Commission derived from the Parliament, and upon that he grants Commission to his Officers, which is all one and the same. The Prince took him from his Father, and I have mine from the Prince, which is full power, he being Captain-General of his Majesty's Forces.

Court. Sir, have you nothing else to say?

Col. Morris. My Lords, under correction, I conceive it is sufficient, for the State power, all Judges, Justices of Peace, your Lordships, your Prothonotaries, and all other Officers, did act by the State power, and all precepts and writs of Law were issued, and executed in his name, and by his authority.

Court. His power was not in him, but the Kingdom, for he was in truth for the Kingdom; the King's Highways, and the King's Coin being full power, is not his own, but his Subjects; and his natural power, and legal power, are different.

Col. Morris. My Lords, under correction, I conceive his legal and personal power are undivisible, all one, and cannot be separated.

Court. Sir, all is one; if the King had me kill a man, is this a sufficient warrant for me to plead? No Sir, it is unlawful. No, have you no more?

Col. Morris. I beseech your Honours give me leave, I am upon my life.

Court. Speak what you will, Sir, you shall be heard.

Col. Morris. Your Honours, my Lords, then, my Lords, I conceive I have said nothing against the Parliament, for that which I added, it was for the King. And hence the abolishing of regal power, I have not modelled with any thing against the Parliament, for that Act was but enacted the day of July last, and before that Time and Act of abolishing Kingship-Government, that princely Palace which I kept by his Commission was abolished. My Lords, I beseech your Honours, that my Commission may be read, to give satisfaction to the Court.

Lord Paynter. Sir, it will do you no good, you may as well throw a Commission from the Pope, all is one.

Col. Morris. My Lords, I desire your Lordships to do me that Justice. Lord Thyrpe. For my part I am willing, if my Brother be not guilty in Lord Paynter. Sir, we will do for Law to be void, it is to no purpose.

Col. Morris. These if your Lordships are not pleased to do me that Justice that it may be read, I desire it may be read to me again. [Upon that, Col. Morris received his Commission read.] My Lords, it seemeth strange, that your Honours should do that which was never done the like

before, never any of your Predecessors ever did the like; I wish it may not be to your own and your friends wrong, that you make yourselves precedents of your acting, and myself of suffering. But, my Lords, I do not speak for saving my own life, for (I thank my God) I am prepared, and very willing to part with this lump of clay; I had a large time of repentance, it being twenty-two weeks since my imprisonment, and I am sorry for those which are like to undo the late sufferings, if your Lordships take away my life. And though I do not speak any way in defence, indeed at this present there is a cloud hanging over our heads, I desire there may be a fair Sunshine to dispel it. And though there were, a world of gloom in the Kingdom when I took the Oath, there is not wanting the same now, only the name is not yet come; and as I was to be the first brand to *Scouring*, to be (meaning *Barren*) to *Township*, and that to others; and though you take away my life, there will be others which will take up the Lintstock to give fire, though I be gone.

Court. Sir, you have little hopes to talk of any far to be given here, having received such a total rout an *Ireland*.

Col. Morris. My Lords, I should have been now living to have contradicted your late news concerning *Ireland*; but since you have given me a hint of it, you must give me leave to let your Honours know, that I received Letters from the Marquis of Ormonde dated the 31 of *August*, and yours in but the 2d; whereas he pleads to let me understand of the good state both of *Irish* men, and that whatsoever shall befall me here, the one shall be to those which he hath professed there, which are the same as good there. Therefore if your Lordships did not at all view my person, yet methinks you should have some care of it in your own friends good.

Court. Sir, have you no more to say?

Col. Morris. My Lords, still I appeal to my Commission, which I conceive is sufficient to defend me without, at what I have done, notwithstanding your power to the contrary.

Court. It is nothing at all, we have power to try you here.

Col. Morris. Then my Lords, (and I correction) Laymen may as well be tried at a Martial Court which is granted, those excellent Acts of *Magna Charta*, and the *Prerogative of Right*, would be delivered.

Court. But you are not bound on here as a Soldier, we shall do what is Justice belongs to us.

Col. Morris. My Lords, still (under correction) I have taken the Oath of Allegiance, and I conceive in that I was bound on so as much as I did or have done, though I had not had any Commission at all. And I beseech your Lordships that you will do me Justice, and not incline to the right-hand of affliction, or the left to hazard, but to have an ear for the accused as well as for the accuser; neither have I asked any thing contrary to my Allegiance, which Allegiance I was willing to pay to the Son, as well as to the Father. Now for the Allegiance, I owe to any person or authority but to itself, I know none.

Lord Thyrpe. Sir, if you have any thing else to say, speak for yourself, for this is not much to the purpose.

Col. Morris. My Lord, his true, since you have rejected that authority which I acted by, I might as well have held my tongue at the first, and spoke nothing, were it not for the Satisfaction of the hearers, but if it shall be so, that you will make me a precedent, you must do with me as you did with my dear and honored Lord [mercy my Lord of Stratford] making an Act for the future, that thus my following shall not be a precedent to any Soldiers hereafter. Besides, my Lord, this same Statute which you allege against me is, if that any shall act against the King, his Treason; which I have not done; but contrary, for him, and by his authority. And there is an Act of 24 Hen. VII. cap. 1. That whosoever they are they shall aid or keep the King at home or abroad, shall not be questioned at all.

Lord Thyrpe. I'm true, but, Hen. VII. then stood in a sick condition, and being an *Usher*, made that Act for his own safety; sometimes the case of *Jury* ruling, sometimes the Duke of *Languey*, and others maintaining, therefore was enacted.

Col. Morris. My Lord, but this same Act of H. VII. was later than that of Ed. III. which you have laid against me; and as yet was never repealed, until this last Act of 24 of *July*, before which time I had delivered up the place.

Lord Thyrpe. Well, Sir, it seems you have not any more to say. After he had answered, the Court commanded him to be led on there. [Counsel *Blair* being concerned at the same time.]

Col. Morris. My Lords, I humbly desire that we may not be managed; if you make any doubt of us, that we may have a greater guard upon us.

Lord Paynter. Sir, you shall have made both attempts through such guards, as were of purpose left to receive you, ought to be looked to now. Yet, if Mr. Sheriff please, I am content.

Col. Morris. Mr. Sheriff, I desire that this managing may be forbore; if you please to clap a guard of an hundred men upon us, I shall pay for it. This is not only a disgrace to me, but in general to all Soldiers; which doth more trouble me than the loss of my life. Mr. Sheriff, what do you say to Mr. Sheriff?

Col. Morris. My Lords, hitherto (I thank God) I have not done any unholiness or base act, and to begin now, I will not do it to save my life, and though you look upon me *Kings*-wifely, I vow to God, I would not touch the pillars, though it lay in my power to inquire you; therefore I still beg pardon, that I may not be molested.

Under-Sheriff. Come, Sir, it cannot be helped, you are commanded.

Col. Morris. My Lord, I beseech you grant me this favour; it is not my life I beg, but to forbear this managing, which shame and dishonour doth more trouble me than the loss of my life.

Under-Sheriff. It must be done. And upon that, did it, and carried him away. After dinner the Jury brought in their verdict, guilty of Treason.

* I then from *Paris*, "That one Morris, and one Middleton, were arraigned before James Thyrpe, and Judge *Paynter*, *John* applied the Kingdoms they pleads; "in which, Mr. Beuclerk, at the same material news, that they might be tried by martial Law; which was denied them."

"It was heard, said, of *Trincom*, and married with *Baron*; at which he took *John*, a material Act of *Parliament* to never after to be taken."

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Col. *Andrewe*. My Lord, I am here found guilty of Treason by that villain *Bradley*, whom I know to be more enemy, and the full man that I did except against: in which I conceive I have received hard measure, for none could have found me guilty of Treason, had they gone according to the Letter of the Law, which they did not.

Lord *Palmerston*. Sir, you speak too late, you are not to dispute it now.

Col. *Andrewe*. Neither would I, my Lord, if this were a Court of Chancery, but being a Court of Law, bound up in express words and law, I conceive I ought to dispute it, and my business better weighed.

Lord *Palmerston*. Well, Sir, you are found guilty, therefore hold your peace.

Col. *Andrewe*. If I must suffer, I receive it with all alacrity and cheerfulness, and I thank God I shall die for a good Cause, and the testimony of a good Conscience; for which, had I as many Lives as there are Stars in the Firmament, I would sacrifice them all for the same.

Court. Sheriff, Gaoler take them away.

Col. *Andrewe*. Well, I beseech God both King *Charles*, and fight for all those that fight for him, to have victory for him.

After he was committed, Colonel *Bradley* went to the General and his Council of War, that *Andrewe* might be relieved; but Colonel *Protector* replied it, saying, That it would not stand with the *Tactics of the Army*, nor the Safety of the Commonwealth, to let such a *Remnant* live, the Parliament having advanced him worthy of Death, and given Instructions to the Judges accordingly.

The Speech of Col. John Morris, Governor of Portsmouth-Castle, at the Place of Execution at York, August 23, 1649.

WHEN he was brought out of prison, looking upon the scaffold that was there set for him, lifting up his eyes to Heaven, kneeling upon his brest, he said, I am as willing to go to my death, as to put off my doubtlet to go to bed; I despise the shame as well as the Cross; I know I am going to a joyful place; with many like expressions.

When the Poet met him about St. James's Church, that was sent to the Parliament to mediate for a reprieve; and told him he could not prevail in it, he said, "Sir, I pray God reward you for your pains, I hope, and am well offered to find a better pardon than any they can give; my hope is not in man, but in the living God."

At the place of Execution he made this profession of his faith, his breeding, and the cause he had fought in.

1. *Godliness*. First I was bred up in the true Protestant Religion, having my education and breeding from that honourable House, my dear Lord and Master *Stafford's*, which place, I dare boldly say, was as well governed and ruled as ever any was before it; I much doubt, better

than any will be after it, unless it please God to put a period to these dissipated times; this Faith and Religion, I say, I have been bred in, and I thank God I have hitherto lived in, without the least wavering, and now I am resolved by God's assistance to die in.

2. *These points are necking*, if compared to their docters and pains, which *John Chrysostom* hath said for us; when in a bloody sweat he endured the wrath of God, the pain of Hell, and the cruel and flamm'd death which was due to our sins; therefore I praise the Lord that I am not plagued with far more grievous punishment; that the like hath befallen others, who undoubtedly are most precious and blessed Saints with Christ in Heaven. It is the Lord's affliction, and who will not take any affliction in good part when it comes from the hand of God? And what shall we receive good from the hands of God, and not receive evil? And though I desire, as I am carnal, that this Cup may depart from me, yet not my will, but thy will be done.

Death brings unto the godly an end of sinning, and of all miseries due unto sin; so that after death there shall be no more sorrow, no cry, no pain, for God shall wipe away all tears from our eyes; by death our souls shall be delivered from troubles; and thus can upright body shall put an interruption, and the soul immortality.

3. Therefore blessed are they that are delivered out of so vile a world, and freed from such a body of bondage and corruption; the soul that enjoys immediate communion with God in everlasting bliss and glory; as it takes us from the miseries of this world, and the society of sinners, to the city of the living God, the celestial Jerusalem.

4. I bless God I am thought worthy to suffer for his name, and for so good a cause; and if I had a thousand lives, I would willingly lay them down for the cause of my King, the Lord's anointed; the Scripture commands us to fear God and honour the King, to be subject to every Ordinance of man for the Lord's sake; whether to the King as supreme, or to those that are in authority under him. I have been always faithful to my trust, and, though I have been most basely accused for betraying *Liverpool*, yet I take God to witness, it is a most false aspersions, for I was then sick in my bed, and knew not of the delivering of it, till the Officers and Soldiers had done it without my consent, and then I was carried prisoner to Sir *John Ashmole*.

Afterwards I came down into the Country, and finding I could not live quietly at home, I was persecuted by Col. *Farley*, Col. *Courtenay*, Lieut. Col. *Forbes*, whom I took for my good friends, to march in their troops, which I did, but with intention still to do my King the best service when occasion was, and so I did; and I pray God to turn the hearts of all the Soldiers to their lawful Sovereign, that this Land may enjoy peace, which tell them it will never do; and though thus tell me, yet will I put my trust in that; wherefore I trust in God he will not fail me nor forsake me. Then he took his Bible, and read divers Psalms in for his own occasion and consolation, and then put up divers prayers, both publicly, and some privately; which being ended he was executed.

XXIV. The Proceedings, Examination, and Trial of Col. EUSEBIUS ANDREWE, (a Barrister of *Gray's-Inn*.) before the High-Court of Justice, Aug. 16, 1650, for High-Treason.

Published by Francis Buckley, Gent. who was Assistant to Mr. Andrewe in the time of his Imprisonment, and an Eye-witness of all the bloody and execrable Proceedings.

ON Monday the 24th of March, 1649, Col. Andrewe was taken prisoner at *Graysby* by Major *Forster*.

The next day, he was committed before the Lord-President *Bradshaw*, Sir *Henry Mildmay*, Kent, and Thomas *Earl*, Esq. three of the Members of State, delegated by the Council for the taking of the examination of him, and of Sir *Henry Chibboly*, Kent, Dr. *Henry Edwards*, and Mr. *Clark*, casually seated in the same Inn with Mr. Andrewe.

These Gentlemen examined him by punctually to every action and circumstance that had passed on his part since he took up arms, and especially since the surrender of *Windsor*, and his return from thence to *Leam*; and also concerning his several Lodgings, Names, Acquaintances, Removes, Abodes in the Country, Correspondencies by Letters, and Interest in places and persons, as if they had kept a Diary for him. Which considered, and that Sir *John Gell*, Bart. Major *Bernard*, Capt. *Smith*, Capt. *Bayley*, and Capt. *Alford*, (with whom he had the last and most questionable correspondence) were all in custody, he found himself to be betrayed, but could not at present grieve by whom; but well saw that he had better fall in his confidence, than to deny what he saw by the perfidy of some of these formerly trusted, and examined before his coming up.

In his Answers, he would have been circumstantial, but was kept close to the Question: at his departure he desired that he might let down his own Narrative, according to his own sense, which was granted him to prepare, and to send or bring to them as there was opportunity. And having totally, as much as in him lay, executed his fellow-prisoners as to any thing relating to his Delinquency, he was with them committed to the Gatehouse.

Wednesday following, he was re-examined and re-examined.

On Friday, he was again examined, and delivered in his Narrative to the Lord-President, and the House. But business happening, detaining the other two examiners, he was by the President returned.

On Saturday he was recalled, and there, as at all times before, was

and treated with civility, and no little pressure to discover some great persons, his supposed confederates: the aim, as he conjectured (and that upon strong inducements, and some expressions) was at Sir *John Parnes*, Sir *John Charles*, and Sir *Thomas Whitmore*, &c. But he accounted it a great blessing in his unhappiness, that his misfortune was not fatal in any of his friends or familiars, who yet knew nothing of the extent of his Imprisonment, more than for what they were beholden to common fame.

On Sunday, he was called out of his bed, and by two Messengers, his Keeper, and his Man, brought into a boat at *King's-bridge*, at *Windsor*, and thence carried to the Tower. The warrant, which at the Lieutenant's house was read, informed, that he was committed close prisoner for High-Treason, in endeavouring to subvert the present Government, &c. to be kept still delivered by Law.

The Narrative follows.

To the Right Honourable the Council of State;

The humble Narrative of Col. Eusebius Andrewe, as to the Questions and Matters of charge, whereupon he was examined before President *Bradshaw*, Sir *Henry Mildmay*, and Thomas *Earl*, Esq. in that behalf delegated by the Council the 27th of March, 1650.

May it please your Lordships,

BEING unanimously, and by a treacherous practice seduced into an assent which renders me obnoxious to your Lordships Displeasure and Justice, and thereupon committed and brought to examination, I assured your Lordships delegates that I came with a resolution to deal candidly, and not to perjure my life by framing a lie, or denying a truth. The last purpose I still retain, calling myself wholly at your Lordships feet; humbly praying leave, that while I answer to matter of fact, I may be permitted to cloath it with pertinent circumstances; that while the one lays me liable to

* The Narrative is here printed at large, being the Evidence urged against him at his Trial.

your Justice, the order may bring me within the capacity of your mercy; which in case it is afforded, I shall embrace with all humility and thankfulness. And if I am, I shall discharge within my bosom to justify God Almighty in his promotion of my ruin; and I hope Charity enough to forgive whoever have, or shall be instrumental to it, and bear the burden of my folly, with a full confidence of God's reserved favour.

My engagement for his late Majesty began soon after *Henry Town*, 1642, and continued until the surrender of *Worcester*, in July 1650.

I have consented to make my companion, not having a considerable, and not willing to own an intolerable estate.

I have not taken the prohibition, solemn league and covenant, negative Oath, nor taken the protest engagement.

John Bernard, formerly a Major under me, and by reason of his good parts and valorous demeanor, being in my good opinion, at my return to a private practice in my calling for my necessary support, frequent by order, and I passed to me such occurrences as he met abroad in discourse, and did often involve the discourse of the Reformation, the fallacies of the Levellers and Arians, and the proceedings of a certain Committee, or like Council of Officers, of which Col. *Clive* was chief, and himself after Col. *Clive*, upon a personal charge against him, for opposition, and against me, for my former delinquency, to the passing, promoting, or countenancing in which I was originally a stranger, it did over interest myself therein rather than the hearing his discourse; neither did ever willingly or intentionally meddle with any of the persons or actions of the Reformation, Levellers, or Arians, upon any of his discourses.

About *St. James's Park*, Major *Bernard* offered to me a acquaintance one *Capt. Blythe*, who soon after brought with him one *John Gell* (who presented to him he had concerned under Sir *John Gell*, was sincerely his friend, and until this time his dependent), who, submitted frequently produced to me treatises of Letters, (with the copying of which he proceeded to be entrusted under Mr. *Raymond*) which did appear to portend the occurrences in reference to the affairs of State, and their consequences at home and abroad, from their several agencies, which I only read in his sight, and immediately delivered them back, he pretending that he was to carry them to Mr. *Thomas Bury* to be transmitted over sea.

Capt. Blythe, and *John Bury*, in their discourses did insinuate that their interest was great in the Reformation, and that by them great advantage would accrue upon my insuperability to be done for the Royal Party, and magnified Sir *John Gell*'s interest in his Country, his reluctance at what he had done in the Parliament's service, and his willingness to expiate his former fault with a beneficial service to the Prince. And Major *Bernard* propounded, that a former design in the time of the war laid by me for the taking of the life of *Edw.*, might by their help, and the conjuncture of force brought to be effected by Sir *John Gell*, then to me a stranger, and by *John* and *Bury*, pretended to be willing and able to raise considerable numbers, to be raised and executed; and thereupon it was concluded, that I should with *Bury* try with me *Cambridge* would engage in it, and then ride down to Sir *John Gell*, to see if his strength and purpose were such as pretended; and this got to be repeated but upon the contingency of facilities in *London*, and *London*, was he full at last as concluded.

About the middle of *December*, *Capt. Blythe* brought me insinuations, to draw a petition for Sir *John Gell*, for the granting of his arrears, which I drew accordingly; and not long after, I was invited to give him a meeting, till then having not seen or corresponded with him, and received an invitation and instruction to arbitrate between him and his Lady, with Sir *Thomas Pennington*. And amongst other discourses, Sir *John Gell* did take notice of his inequality of his service, and his illness, and the multiplicity of what, and other services, to an end they intended not, and that he desired to be so understood, and when opportunity should be, to be introduced to the Prince, and did insinuate, that if ever he was to be up again, it should be for the Prince; and at several other subsequent meetings the discourses were general, and much to this purpose, but no particular design had or contrived.

The time limited by the Act for departures, viz. being near expired, and myself being purposed to withdraw into the Country, used the Summer Voyage, into some of the Plantations, and so to purpose being in treaty with Sir *Edmund Pender*, about the conditions of New Armo plantation, of which he was then almost Count Palatine, and Proprietor; on Saturday 16 *March*, I was unexpectedly visited by Major *Bernard* and *John Bury*, and they enquiring my resolution concerning my leaving the Town in obedience to the Act, I signified my purpose to go to New Armo or to *Perkins*; upon which they took an opportunity to make a proposal to me in effect, that they had a considerable design laid, and friends and money to set on foot and back it, and that I should have two or three hundred pounds in hand power to draw money by Bills of Exchange, for which reason should be necessary for my support, and management of what should concern the said design in *London*, if I would undertake to go over, and promote it to the Prince. And they did then in general terms signify, that it was an easy matter, especially the Cavaliers going out of the Town, by complicity in all Countries, to surprise the hearts of the army at their several quarters; and did insinuate, that Major *Bernard* had a design in thought, which as I remember he produced, and I believe was concerning such purposes, but was not read, but referred to further time of consultation. My answer was, that if the money were ready, I would dovert any former purpose from any Plantation, and entertain the motion.

Some meeting, they came again and informed me, that several persons of quality and fortune in *Kent*, *Buckingham*, and *Derby*, were, or would then presently come up near the Town, and would join in an engagement, and advance money; and that Sir *John Gell* would also engage, and might with a word of his mouth bring in his friends, and Sir *Andew Kerrison*, Sir *Guy Pender*, and Mr. *Fitzherbert*, and a fourth person, whose name I remember not; and therefore desired me to draw an engagement, (which I did in a loose paper, after the lease of them or one of them, the said *Bernard*, or *Bury*, introduced) and to move Sir *John Gell* to join in such an engagement; but did permit me to join in the same at that present, for the countenancing of their before mentioned friends, amongst whom, I remember only their surnames *Byon*, *Thatch*, *Baker*, all to me absolute strangers.

That day I spoke with Sir *John Gell*, and acquainted him with their offer and proposal to go, and deliver from him. He answered, that he could not meddle with doing in that design (which he took upon him to be acquainted withal), for which he was to them in no capacity, nor would be engaged under his hand and seal, to be he and so, by my future action for them; that that design was a fellow given to drink, and to his tongue; but entrusted me, that if I went over upon this occasion, to solicit the Prince with a good opinion of him, and that he would do nothing against him; and if he were at all in command, he would be to his advantage, or to that effect.

I returned to them Sir *John Gell*'s answer, with which they were not, or seemed not altogether satisfied, and appointed on Monday at five of the clock, that the persons of the Counties of *Kent*, *Buckingham*, and *Derby*, or some of each County from the rest, should give a meeting at the *Town Cross*, at the *Stony Cross*, and be all furnished in the design, and give their respective portions of money as he paid in present, and raised for the future, desiring me to take care to move, that they might be also provided for, so to be able to hold intelligence, and ride about from place to place to lay the design.

At the said time, and Major *Bernard* produced two letters, one subscribed by *Smith*, another by *Thatcher*, purporting that the *Knights Gentleman* were come as far as *Rebeck*, and would that night be within twelve miles of *London*, and be there all day, and then in the evening, on *Tuesday* by eight of the clock, would at any place give meeting to him, and his Colours; and that they were actually desired to bring forward to them that night, which he was actually desired to regard, and that they should come on nearer, in fear of the watchfulness of Colonel *Bloss*, and that the two hundred and fifty pounds were ready to be laid down to perform their undertaking. No man of any County giving any meeting according to the first appointment at the *Queen*, but the said *Bernard* and *Blythe*, and one who calls himself *Captain Ailly*, only known in face to me, who pretended to be privy and knowing of the truth of all that their former discourses and their letters tended to, and *Bernard* pretending to go instantly to *Smith* from *Rebeck*, I brought him and *Blythe* to the wine-side, and in the walk we saw *Smith* again to obtain Sir *John Gell*'s signature and seal to the engagement, which *Blythe* had then already engrossed, and that I would go presently to *Rebeck* with them about it, which I refused, and told them, that I was able to satisfy any man of quality, discretion, and secrecy, concerning Sir *John Gell*'s reality, though not actually engaged; and I left them.

That night about eight of the clock, one *Smith* came to me (till then an absolute stranger), and *Capt. Ailly* came to me, and brought me a letter from Major *Bernard*, highly reproving me and Sir *John Gell* at backwardness, and with holding our own hands from the engagement, and that we intended our own honours upon their dangers, without giving them assurance of our secrecy and confidentiality; and that unless the engagement were subscribed by Sir *John Gell*, his *Knights* persons would not proceed further. I was known to Sir *Smith*, who took upon him to come as from them for introduction in that point. And in answer, I said a vote of secrecy said him, that I was I failed concerning Sir *John Gell*, and affirmed, that if any Gentleman of quality or whole judgment the rest would oblige, should address to Sir *John Gell*, that under an Oath of secrecy he would satisfy him, but could not trust *Blythe*, and *Bernard* was to him a stranger. With this they departed, affirming me that they thought no more would be expected from Sir *John Gell*, and that they would, or one of them, away that night to the company; and that the next day being *Tuesday*, the money should be paid at the *Palmerston*-head.

They broke their time, and my occasion press me into *London*, being next day to be gone by the Act; and about nine of the clock next day, I was sent for by *Captain Ailly* and *Blythe*, who delivered me a letter from *Bernard*, pressing me to subscribe the engagement which *Blythe* engrossed; and that being done he would go with me the next day to *Grimsford*, and the Gentlemen of *Kent* should meet there, and there the money should be paid.

The ride being for his passage on *Wednesday*, *Bernard* came not, but *Blythe* presented him to be at *Palmerston*-head with the *Backinghamshire* Gentlemen, and that he was well-looked, and would come presently, and should tell me; and to *Captain Ailly* and myself, with no more than fifty shillings in my purse, amounting upon the money there, went to *Grimsford*, and expected till *Thursday* night, but found no *Knights* men, and so one from *London* coming. *Capt. Ailly* went that night with one *Seemore*-code for *London*, to enquire the reasons, and on Friday morning early came Major *Bernard*, and Mr. *Smith* with a letter from *Blythe*, purporting that if Sir *John Gell* would not con-vince under his hand and seal, with such whole names were subscribed (of which I only know *Bernard*, *Smith*, *Blythe*, and *Ailly*), they would go over themselves (meaning himself and *Bernard*) to the Prince, and would back mine and Sir *John Gell*'s with him, and dis-appoint all that I promised in his favour; and that he had letters from Sir *John Gell*, which he could produce, should make him appear his refusal, or such refusal; and therefore desired me to write to Sir *John Gell*, to let him see his danger; which I did, laying the case before him, and not putting him, but leaving him to do as God should direct him, and his judgment lead him. With which letter *Bernard* and *Smith* went away, with assurance that whether Sir *John Gell* engaged or not, I should hear next day from them, and if he did engage, they would come down and go for *Rebeck*, where their former undertaking should be performed to me; and if he did not, I should be disappointed, and have my subscribers and find me, and the design should fail. I expected till Saturday night, and finding no answer, resolved on Monday to intend my journey into the Country, upon my first purpose for New Armo; and in the morning early was fired by a party of horse, and brought to *London*.

My Lord,

In that Narrative you will see a believing nature wrought upon by insinuations men, such who cannot be true to any, whilst false to parties. The pretended design vanish, as never being more than a phantom, and not worth your regard, the real design effected, so far as they had power or opportunity; that is, to bring the game into the tool, and there leave them to be entangled and made a quarry.

* This Engr is time, as some others both of substance and circumstance, are rectified upon better memory, by some following papers sent to the Lord President. You

You will find me passively obdurate, being prompted and incited by their information, and not once but heartily to them.

It lies in your Lordships power to cut me off, by extending which, you can arrive to no further remedy at all, and possibly, by an Act of lenity, you may do an office acceptable to God.

Consilium vobis, modo in rebus meo.

Whoever shall be present at my Trial, or into whose hands this Narrative shall fall, will easily conclude with me,

Quæ vult parat Deus, hæc donat præter.

EUS. ANDREWÆ.

On Tuesday the first of April, after his removal to the Tower, he was called to be further examined, and at his return went back to them some particulars, (was) concerning Captain Holmes, by want of memory not before specified. And in case the House should have sufficient light by the said Holmes, it might have made Mr. Andrewe capable of lawful favour by reason of his tenacity concerning the said Holmes, who (for aught Mr. Andrewe knew) was guilty of his being betrayed, and if so, might as well impute his knowledge of Holmes's purposes, to the end that Mr. Andrewe's concealment of them might augment his crime; and also concerning Mr. Thomas Bernard, who being at large and unquestioned, Mr. Andrewe had cause to have the like jealousy of.

On Friday next morning following, being the 11th of April, he was called again, and was confronted with Sir John Gell, and avowed what he did indeed neither directly deny, nor was troubled that he did aver, freely telling the President, that he could not remember some things in point, yet he was confident that he would not do him, or any man wrong; and then declared to the President, that he look'd upon Sir John Gell, as upon himself, as a betrayed man; but as concerning others, he knew not by whom, he had been first in his confessions, though to his own injury.

He then questioned these Lordships, upon better memory, in point of material circumstances. They desired him to put them into writing, and to send them, and they called for his head to the former examinations and papers; which he gave them, and the same day went to them as follows:

To the Right Honourable the Lord-President and Council of State.

May it please your Lordships,

ACCORDING to the favourable licence by your Lordships to me given, I have digested into writing these matters of circumstance, wherein my Examinations and Narrative are in defect of my memory only in certain and strictly bounden paying, that they may be received and read a part of that relation, which I must abide by at my Trial, and that the former errors may be rectified, and defects supplied so far, as by this supplementary account upon my belated recollections given, may be done. And I shall then be confident, I shall appear not to have wilfully concealed (however guilty) or misinterpreted any thing pertinent, whether the same carry with it my condemnation, or excuse.

What passed between myself and Mr. Bernard, before my acquaintance with Holmes and Boyles, and which is express in my Answers and Narrative, was then time before Easter-Term last, when there was an order for departure of persons in my condition, from this Tower, and I, in obedience thereto, did leave this city on Saturday the 6th of May, and came to Mr. Gifford's house at Gifford-Hall in Suffolk, on Thursday following; from whence I thence rode at any time more than five miles, until the 16th of May, when I was sent for to make assurances between a husbandman and her husband in point of pasture, by them to me mutually referred: in which business, and in other matters between another husbandman and a Merchant of London, being under reference to arbitration; as also in endeavouring to get some friend to contract in the behalf of my daughter, for the reversion of a Lease holden of the Dean and Chapter of Ely, in which she is interested for a life in being, I continued in and near the City until the third day of September; in which time Bernard voluntarily brought to my acquaintance Holmes and Boyles, upon the pretences in my Answers and Narrative set forth, to which I humbly refer.

The note which mentions Boyles's going with me to Cambridge, and so to Sir John Gell, which in my Answers I have expounded, was drawn from me by Bernard's importunity, and written at his request; but what was made of it, (other than to say it up, and receive it for his present purpose) I know not, nor had any account of it, but went away the third of September, there being no conclusion of any thing to be done in this business, or circumstance possible. But Mr. Bernard, who knew how to direct me, persuaded by Letter to intimate further to me; when from after that, I never received any Letter or Message to that, or any other purpose, until my return into Middlesex-Town; when he told me, that the indiscreetness of things in Ireland had been the impediment.

As to the day, viz. the 18th of October, being the Fast day at Ely, it was only in discourse mentioned to be an opportune time, in case the life were so (which it was not) possible. Neither any solemn, or serious discussion, consultation, then-taken, or then-after made or laid, other than in transitory conversation; nor any perfect agreement as much as by word or promise, until that fresh discourse was let on foot by Bernard.

I drew Sir John Gell's petition before Christopher, and had several compliments from him by Holmes, (at least presented) before I drew him, and I believe, after I withdrew I was invited to him, and escorted by him in the removing the differences between him and his Lady; in the last Term I did so in answer, and in the several times of our casual or occasional meetings, the differences have continued to what I have before signified, and in your presence and his avowed; and how so exactly to move your Lordships, in account in time, I cannot.

As to the matter of the engagement, I shole by what I have formerly said, with this note, that my engaging, which was late in the night, before my riding out of Town, in obedience to the Act, I was persuaded by Boyles that Sir John Gell, and their pretended friends of the Country did not engage, I should be disappointed; and in the hour of my going away, I would be ready to recede according to promise, but by Boyles's pretended to be at Tisbury-Court went from Readingshire men, and that he would undoubtedly follow; I told Boyles, as I remember, in the presence

of Captain Ashley, that whether he came or not, I must for the present remove to Gifford, not having convenience of horse to go elsewhere so suddenly. And if there were persons at Bernard's part with me, I should be ready on mine; and if not, I desire to be disappointed, and left to pursue my private occasions into Surrey. And I did really carry with me words of my Clients to have employed myself upon, in case of their failure with me.

I humbly beg your Lordships pardon for a favourable interpretation of this trouble, which is a duty to truth, and right to others and myself, which could not be omitted by

(My Lord)

Your Lordships humble prisoner, and servant,

EUS. ANDREWÆ.

That, together with a petition for allowance and liberty of travels, returns, being the same day signed in the presence of the Lieutenant, were sent up, and sent to the Lord-President's own hand.

This was his second petition, which with a former to the same effect, (and out of moment to fulfil) did never receive any answer.

At the same time he went to Sir Henry Mildmay on the behalf of the Gentlemen who were taken with him.

Mr. Andrewe at several times took upon him to aver to the Committee of State, that they had spies upon him for some years, and particularly Bernard; which the Lord-President did not deny, but yielded the State, by the practice of all means, to sit watching upon persons of all conditions to them.

This day the Lord Grey was with the other three of the State.

His third petition for about Easter, being by Sir Henry Mildmay and Mr. Sir put upon it, to submit himself, which petition of favour he brought the State in such manner; which for his relations sake he did, but with some caution, in these words:

To the Right Honourable the Lord-President, and Council;

Th. humble Petitioner of Eusebius Andrewe,

THAT your Petitioner in fervently sensible, and humbly acknowledges, that for his high delinquency against the State he is become forfeited to their Justice.

That he hath not in the least perverted with your Lordships, in the confession of his proper faults and follies, nor hath kept tight referred concerning himself, or any person, or thing, which may satisfy your Lordships, and more secure the State; and it is not possible to be look'd upon as capable of your present favour and future mercy, which he now doth, and shall always implore.

That his present, delivered condition is made more uncomfortable, by his wants, and the exclusion of his friends and relations; without a supply, in which life itself becomes a punishment.

Your Petitioner beseeches himself at the feet of your Lordships, humbly prays,

That his being prosecuted before the High-Court of Justice, may be suspended.

That by your order, his past and future charge of necessities may be discharged, which he requests your petition.

That his friends and kindred may have recourse to him, and that he may have the freedom of his pen.

And in case your Petitioner shall be found in the least to multiply those favours, he shall expose himself worthy of a total deprivation of them, and of your severe goodness towards him.

And your Petitioner, &c.

This was less than was look'd for, though as much as he could venture on; in which his desire for respect of his Term was infinitely, to prevent only his being the first, and exasperating them by giving others aim in his pursuing the Court.

This petition was solicited thirty-three days, but no answer could be obtained, and his wants growing upon him daily, he put in the Lieutenant's hands this following petition:

The Petition, (sent) this as formerly, &c.

THAT your Petitioner hath been twelve weeks close prisoner, his friends neither permitted to visit, nor daring to relieve him, his force for necessaries far beyond his ability to discharge, his credit profligate, and nothing more visible to him than his immediate perishing.

That he hath not been wanting to pray your favours, having these petitions lodged with your Lordships, constantly followed, and answered.

That he hath in his confessions spared nothing which can more conduce to the State's security, or his own contentment.

Your Petitioner therefore humbly prays,

That if at all he must, he may speedily receive his Trial, he being ready to submit to the will of God in the issue.

That if money be relieved for him, which he hath, and hath implored, your Lordships would please to admit him to live out his garden, and to a free conversation in that Commonwealth, upon security given for his future good demeanour.

That in the mean time he may have the liberty of the Church and Town, and the freedom of his friends relief, and that order may be given for the debt incurred there in the time of his close restraint to be discharged.

And your Petitioner, &c.

The Warrant of Committment, which I could not get a Copy of till the 14th of July, is as follows:

THESE are to will and require you, Kenneth to receive into your custody the body of Eusebius Andrewe, Esq. and how you are fully to keep in close imprisonment in the Tower of London, in order to his further examination, he being committed unto you for High-Treason, in plotting in treason during the subversion and alteration of the present Government: that you are not to fail, and for so doing, this shall be your Warrant: Given at the Council of State sitting at Whitehall, this 20th day of May, 1650.

By word of the House and by the act of the Council of State appointed by Authority of Parliament.

At a Court of the

Town of London.

John Bradshaw, President.

That

This Warrant is vicious in itself, for two Reasons, which make a right Warrant of Commitment, *Coke's 2d Part Instit. fol. 52, 529, 531.* allowed by the Parliament.

1. That it is not done by due Process of Law.
2. That it hath not a Conclusion, viz. 4 And safely to keep until he be delivered by due Course of Law.

But being it indefinite, and is rather a Condemnation to perpetual, as well, to arbitrary imprisonment, which is worse.

The close imprisonment is but in order to his further Examination, and he had been twice since committed, and signed his Examination before *Egbert*, and did not refuse to answer any Questions demanded of him.

The Warrant is dated from the Council of State sitting at *Whitehall*, the 23d of July; whereas he was brought to the Tower the 23d of March, being Sunday, by seven in the Morning, at the opening of the Gate (no Council sitting) and the Warrant signed on Saturday the 23d of March.

Having answered a Month in Expectation of an Answer to his last Petition, he petitioned the Parliament again.

To the High and Honourable the Parliament of England,
The humble Petition of *Estheus Andrews, Esq. sole Prisoner in the Tower of London,*

Sheweth,
THAT your Petitioner hath been, by a confederate Pack of Scoundrels, wrought into Actions, which (abstracted from their Circumstances) render him liable to your Justice; and thus done, not without their further Hope, that your Petitioner, as they supposed, had Interest to have drawn divers Persons of Quality and Fortune into the same Engagement.

That being of that Part of their Aim, the said Confederates did betray your Petitioner to the honourable Council of State, by whose Warrant he hath been Extorted Weeks a Prisoner, without a Person of his own, the Access of Friends, or Means of Subsistence allowed; and is to perdition by his Wants, before it be distinguished by a publick Trial, wherein he be a better Object for the applying of your Justice, or your Mercy.

That he is hereby disabled to be accountable to the Service of God, the Duty to his Family and Friends, and to those who give him Credit for Bread. And in case he should be called from such his close Retirement to an Trial, must be deluged and deprived of all his Means of making his reasonable Defence, which, however it may suit with Policy, will not be consistent with Religion and Honour.

Your Petitioner having for Relief in the Premises, by all opportune Addresses, and by several Petitions importunately followed, and sought the said Council of State without Answer, in the deep Sense of his pressing sufferings humbly suppliceth to this high Court, calling himself wholly thereupon, and as humbly prays,

1. That you would present your Justice by your Mercy, and admit him to sit out his Pardon, upon Security given for his future good Behaviour to the State in this Commonwealth.
2. That if that be too great a Favour, you would grant him Licence to depart the Commonwealth, he engaging not to act, or contrive against to the disturbance of the State.
3. That if he be not thought capable of either, but that he must receive a publick Trial, he may have a convenient time of Preparation, after a qualifying of his Imprisonment.

1. That in the mean time he may have the Liberty of the Tower, and visit of all Friends; and that by your Order, his Debt for Livelihood, incurred in his close Retirement, may be discharged.

In all which your Petitioner is ready to submit to the Will of God, whose Providence hath put Justice and Mercy into your prudent disposing. And shall ever pray.

Notwithstanding his Petitions and Letters, he was brought before the High Court of Justice (in *August*), at which *John Bradbury* was President, and his own Narrative was urged against him as a Confession; and Attorney-General Prentiss used him with very ill Language. But he put into Court his Answers in writing, which were as follow:

The humble Defence of *Estheus Andrews, Esq. in his Defence, to the Proceedings against him before the Honourable the High Court of Justice, presented the 16th Day of Aug. 1650.*

THE said Respondent (with the Favour of this honourable Court) receiving and praying to be allowed the Benefit and Liberty of making further Answer, offers to this honourable Court,

First, That by the Statute or Charter, filed *Magna Charta*, which is the fundamental Law, and ought to be the Standard of the Laws of England, confirmed above thirty times, and yet overruled, it is in the 23d Chapter thereof granted and enrolled,

1. That no Freeman shall be taken, or imprisoned, or be diffided of his Freedom or Liberties, or free Customs, or be outlawed, or exiled, or be any otherwise destroyed; nor will we put upon him, nor condemn him, but by a lawful Judgment of his Peers, and by the Laws of the Land.
2. We will sell to no Man, nor give to any Man Justice or Right.
3. Somewhat, That by the Statute of 43 *Edw. III. c. 2.*
4. The Great Charter is commanded to be kept in all the Points. And,
5. It is enacted, that if any Statute be made to the contrary, that shall be void for ever; which Statute is unenforced.

The Respondent sheweth, That by an Act of the 23d of March, 1650, entitled, *An Act for establishing an High Court of Justice*, Power is given to this Court to try, condemn, and cause Execution of Death to be done upon the Freeman of England, according to the major Number of any twelve of the Members thereof shall judge to appear in Justice.

And thereupon the Respondent doth humbly inter and offers for Law, That the said Act is diametrically contrary unto, and utterly inconsistent with the said Great Charter, and is therefore by the said record Statute to be null and void.

That it can with no more Reason, Equity, or Justice, hold the Value and Reputation of a Law (the said Statute before recited being in Force), than if, contrary to the second Clause in the 23d Chap. of *Magna Charta*, Vol. VII.

it had been also enacted, that Justice and Right shall be deferred to all Freeman, and sold to all that will buy it.

Thirdly, That upon presenting, by the Pension of Right, 3 *Ger.* that contrary to the Great Charter, Trials and Executions had been had and done against the Subjects by Commissioners Martial, &c. it was therefore prayed, and by the Commissioners granted, That,

1. No Commissioners of the like Nature might be afterwards issued, &c. And that done.

2. To prevent, lest any of the Subjects should be put to Death, contrary to the Laws and Statute of the Land.

The Respondent humbly sheweth and sheweth, That

This Court is (though under a different Style) in nature, and in the Proceedings thereof, directly the same with the Commission-Martial; the Freeman thereby being to be tried for Life, and adjudged by the major Number of the Commissioners sitting (as in Courts of Commissioners Martial was granted), and was agreeable to their Constitution, and consequently against the Petition of Right, in which he, and all the Freeman of England (if it be granted there by any such) hath, and have Right and Interest; and he humbly sheweth his Right accordingly.

Fourthly, That by the Remembrance of the 13th of December, and the Declaration the 27th of January, 1641, the Benefit of the Laws and ordinary Courts of Justice are the Subjects Birth-right.

By the Declarations of the 13th of July, and the 15th of October, 1641, the Preservation of the Laws, and the due Administration of Justice, are owed to be the justifying Cause of the War; and the Ends of the Parliament's Affairs managed by their Swords and Councils. And God's Cause is by them implicated, in case they should ever decline their Ends.

By the Declaration of the 27th of April, 1646, Promise was made not to interrupt the Course of Justice in the ordinary Courts thereof.

By the Ordinance or Veto of Non-admittance, Jan. 1648, it is adjudged on the Parliament's behalf, That

Though they lay the Kings side, yet they will govern by the Laws, and not interrupt the Course of Justice in the ordinary Courts thereof.

And thereupon the Respondent humbly intereth and sheweth, That

The Constitution of this Court is a Breach of that publick Faith of the Parliament, exhibited and pledged in the Declaration and Veto to the Freeman of England.

And upon the whole Matter, the Respondent (having as aforesaid) doth humbly shew for Law, and sheweth as his Right,

1. That this Court, in defect of the Validity of the Act, by which it is constituted, hath not Power against him, or to put him to a further Answer.

2. That by Veto of *Magna Charta*, the Petition of Right, and the before-recited Remembrance and Declarations, he ought not to be proceeded against by this Court, but by an ordinary Court of Justice, and to be tried by his Peers.

And prays, that this present Answer and Salvage may be accepted, and registered, and that he may be tried by his Peers accordingly.

EUS. ANDREWS.

The further and second Defence of *Est. Andrews, Esq. to the Honourable the High Court of Justice, presented the 16th Day of Aug. 1650.*

THE said Respondent (with the Favour of this Honourable Court) receiving and praying to be allowed the Benefit and Liberty of making further Answer (if it shall be adjudged necessary), in all Humbleness of spirit presents Answer, offers to this honourable Court,

That by the Letter and present Sense of the Act, entitled, *An Act for establishing an High Court of Justice*, the said Court is not qualified to be a Freeman of England (and such the Respondent asseeth to be) for Life in Case of Treason.

First, For that, 1. The said Court is not constituted a Court of Record, and (but upon Record) cannot at all have that Account of their Freeman, which Kings were wont to have of their Masters of Justice.

2. The Freeman, and such who are and may be concerned in him, can have no Record to shew unto, by which to preserve the Rights due to him and them respectively, viz. of

1. A Writ of Error, in case of erroneous Judgment, due by the Proceedings.
2. A Fine of Answerers acquit, in case of new Question for the same Fact; the Right so which, and the Necessity of such Record, appears by
3. A being enlarged upon Acquittal, as is the Freeman's Due, by the Stat. 14 *Hen. VI. c. 3.* and the Case thereupon grounded.
4. A Writ of Conspiracy against those who have produced the betraying the Life of the Respondent not to be brought before Acquittal, and so Acquittal but upon Record, as appears by

This Court is to determine at a Day, without account of their Proceedings, have Power to try, judge, and cause Execution, but not to acquit or to give Enlargement; so that the innocent are thereby punishable, the innocent not preferable; the injured and betrayed not vindicable; which are Decrets incompatible with a Court of Justice, and inconsistent with Justice itself, and with the Honours of a Christian Nation and Commonwealth.

Secondly, For that the Members of this Court are by the Act dispensed to be sworn,

1. Not in *conspicuo populi*, for the Freeman's Satisfaction.
2. Not in Words of Integrity, and obliging to Equality.
3. In Words of manifest Partiality, viz.

U
The

Psalm. 39 Ed. III. fol. of Count's Case, 4 Ed. III. Rot. Par. Num. 1. Court de Ardenne's Case. 48 Ed. III. Rot. Par. No. 23. Sir John de Lee's Case.

Richard and Darby's Case, 4 Rep. 152. Ainslie's Case, ibid. 33. Ainslie.

Dyer fol. 120. and Ainslie, fol. 33. The Year Book of Hen. VI. 20. fol. 19.

The Peasants' Case, 9 Rep. fol. 55.

I go to no left) that-offe pemptively; and for reason of challenge
for number.

This was judged in 33 Hen. VI. shridged by *Fit. Herbert*, *fil. 26*.
per challenge, where eight Jurors were sworn, and the rest challenged,
a new return made, and those eight returned, and though formally allowed
and sworn, yet challenged, and adjudge good.

The like allowed in *Hill. 1 Jac.* in the case of *Sir Walter Raleigh* and
Breth.

If this benefit were allowed me, my Lord, to except or challenge the
whole Court, who are in number and quality my *Tories*, as a Jury are,
I should not need to be pemptory in my challenge, being furnished with
abundant reason.

(Here he was interrupted by *Kelly*, who said, those *Statesmen* and *Cases*
were out of date now).

My Lord,

A Jury of *Justice* will be no more nor less, if what I am accused of,
to have endeavored, should take effect; and therefore are not like con-
sidered: I cannot lay the blame of the Court (or if I should, I should not
be believed), and he that but whips against I *Diana* at *Epiphany*, makes
all the *Crimes* his enemies.

3. The second benefit and right, which by denying me a Trial per
juram, you take from me, is the benefit of facing, hearing, and counter-
questioning the witnesses produced against me; which, in such way of
Trial, ought to be observed.

Thus such is the Law, & Mr. *Stanford* asserts in his Pleas of the
Crown. And,

In *Treason*, two sufficient witnesses by the Statute ** of *Edw. VI.* are
required; sufficient in relation to their quality, and to the falsity of their
testimony.

Sur *Edmund Cole* (an Author as authentic as any) puts this for
Law in his explications of the words in the Statutes for *Treason*, *Perjury*,
and *Attainder*: because the punishment was great, the proof should be pene-
trant; not upon presumptions or inferences, or dreams of wit, but upon
good and inherent proofs. And thus he makes good by the Authority of
J. Stanford, and the several Statutes of *Philip and Mary*, and of *Queen*
Elizabeth, and of *Edw. VI.*

Now, my Lord, an evidence either taken in writing, as the person will
voluntarily give it, or casually taken as the examiner will ask it (who is
not seen to take it indifferently, no more than the franks of the ques-
tions are to be proposed than fairly), may be a firming fact, apostle, and a
full testimony; or concerning the person giving testimony, or concerning
the matter, the way, the power, &c. the whole laid together may prove
either nothing, or a malevolent thing.

The case of *Sir Thomas Boleyn*, Lord-Chancellor, accused for bribery, is
common, and I hope, if mine have fair play, it will prove so well.

3. The third and last right and privilege you take from me, is the main
of all the rest, and to the making of which, as it should be made up) all
the rest are but consequence, and leading; that is, of a fair verdict.

My Lord,

By a Jury a verdict passed from all, or not at all; and one knowing
and conscientious man may preferre that innocent man, whose eleven
either ignorant or careless men would deny.

This Court's sentence is to be fixed by number of voices, and some of
them give it: we judging their own judgments, but concerning where
their opinion is (as Judgment shall lead them), which, as it was the
great evil of the late Court of *Star-Chamber*, for whether or it is used (in
Trial of Life especially) it is and can be no other than an evil.

My Lord,

By and from a Jury a verdict passed before their discharge upon their
reciprocal sifting, say affairs of nature; and therefore they will give it both
the right, because that evidence is fresh in memory, without the inter-
vention of other matters, as also for that they are without opportunity to
be perjured by money or friendship. If this Court receive the evidence to-
day, they may at any time (before the eighth of September next) give their
sentence; for were damn I never expect but from a Jury; and in the mean
time, how much their own affairs may put the remembrance of me out of
their heads, and how much the State's power may put my story out of
their heads, I have full cause to suspect. For first, I will not, being re-
solved never to be in love with that life which the Common Law of *Eng-
land* cannot protect, and had rather die the Law's Martyr, than live the
State's Slave.

My Lord,

I have said; and now it only remains that I tell your Lordship, that I
defer you to take into consideration what I have said, and that you would
not suddenly, but deliberately give your judgment, whether I ought to
plead before you as Judges, and to the charge in the Articles, and not in a
Preference of Indifference? Whether to be tried without a Jury, and con-
demned upon evidence unseen? Which this is (and I desire it may be re-
considered). As I do not now willingly retire to plead or answer, but offer
my reason for the suspension of my Plea, until your judgment in the
points be known and pronounced; so, if I be in them over-ruled, I shall
then give such answer to the charge, as shall become a man on my condition.

Not volunter *Dei*, made in raised mood.

EUS. ANDREWS.
3. 7. 2. 1650.

Here the Attorney-General *Proctor* put a Stop to Mr. *Andrews*, telling
him, that the Court was not at leisure to take notice of those Law-Cases,
but of his condition; That he had an affidavit in aid, though nothing effect-
ual sufficient *Treason*, and for that reason he desired death. And there-
upon the Court pronounced sentence against him, That he should be
hanged, & drawn and quartered: but on his Petition to the Parliament,

an Act passed authorizing Commissioners of the High Court of Justice to
issue their warrant for the taking him according to his Petition.

Col. *Andrews*. If I be over-ruled by the Court, that I make either an-
swer or be sentenced for my misdeeds; then I move that I may have a
Copy of my charge, and a day assigned me to deliver my Answer under
my hand.

U. de the *Respon.*

1. If the Court proceed upon Articles, they cannot in reason conceive
that I can plead the general issue in particular; I am to doing, in case I
be convinced of any one Article, I shall receive the doom at all.

2. For that 4 *facts* some of the Articles may be true, yet so such they
may not be available against me, and upon the year of this, I find that
I cannot be convicted, last with circumstance, and as instead of being al-
lowed the freedom of my defence, which is allowed to every Thief in
Anglia, I shall be tried and taxed by such confessions, or proof, as will
be the ruin of my prof. cation, and not preserve myself by making my-
self and actions understood.

The Articles are of several kinds and names; and as one single Plea
will not be applicable to the whole, so it is but requisite that I have a Copy
of them, to give thereby to each one as proper an answer, which though
in indictment is not allowed, yet in this way of proceeding was never
denied in the most arbitrary Courts.

The Counsel-Table gave a charge, and received answer in writing, in
obeyance of Constraint against themselves and commands.

The *Star-Chamber* afforded the Defendant a Copy of the Bill, and li-
berty to examine and cross-examine witnesses, in case the fact charged
were denied by the Answer.

The High-Commission the like, by their Articles and Proceedings upon
them.

My Answer, if not in writing, may either not be understood, or mis-
apprehended, or mis-taken down by the Clerk, to my prejudice.

If this be denied me, then I shall conclude they intend to wipe off my
head, with the smooth glass face of pretended Justice; and shall apply
myself to my attorney, to inform me of what has passed between the State and
me, I may conjecture; and then I will prepare these following words to help
my memory, which as a rule of so much concernment, is not totally to
be relied upon.

First, As to what may be alleged against me in general terms, as a
disaffected person, an opposer of the State, or otherwise, &c.

There are two things which draw subjection, and oblige persons to a
Commonwealth.

(1.) Protection to the State.

(2.) Personal engagement, or fealty to the subject.

(1.) Protection I have received none, but stand in the condition of a
prejudged person.

1. Else if (any) iniquitable, and not permitted by the Law of the
Nation to violate it.

2. Calling taken away, which the Law would not have done, had he
been Convicted.

3. Dwelling not permitted where I can abide, but where I may be
obnoxious to want, and to the State's infliction of punishment, when they
shall take occasion to repeat upon me any thing they shall call a
crime, in reference to my past actions for the late King, and my advantage.

4. Right I can have none, unless I will damn my soul to promote my
estate, or repair my wrong by a contra-legal and contra-constitutional en-
gagement.

This was sufficient reason, owned and justified by the Parliament, for
their substitution of obedience, & honor to *Charles*, by their
Declarations, and Ordinances.

(2.) Fealty or personal engagement I have given none, viz.

1. I have not taken the prohibition of *Alley* 1642.

2. I have not taken the solemn Oath and Coesent; yet if I had, I
might have justified my actions by them.

3. I have not taken the negative Oath, because my Oath of Allegiance
(from which an man can shrieve me) is a negative to that, &c.

4. I have not taken the priest engagement, much more against my
Oath of Allegiance than the negative Oath.

If I had had no little conference as to have taken them, I would have
had as much as to have kept them; and the State cannot in reason expect
from me, or any other, that we should take a forced oath, when we see no
conference meet of keeping the first; nor to take a second, the first and
second being broken, without other dispensation than power, which, like
Alexander's sword, cuts the *Golden knot* which it cannot loose.

Neither lack any man assistance, if he should take the last engagement,
that he should have liberty to keep it longer than the sanity of the State
held to the new new change of Government.

And therefore I stand clear as a down-right subject of *England*, to stand
or fall by the Common Laws of *Engl.* and, if they will deny me just, they
deny my Birth-right, which is equally rightful, and I move just,
they deny me my estate, my calling, my abode, my means of rights.

So deny me the right to be an citizen of *London*, I justify myself.

1. By the late King's Commission, which my answer shows I had,
and under which he was by the same King confirmed my *V. 1642*.

2. *** What was done, was in done, when he who gave me the Com-
mission was on being, and oppressed by unjust unjust men, and what
I did, was in order to his enlargement from his thraldom, and reform-
ation by his lawful power; which was that to which my duty as a subject,
by my Oath of Allegiance did bind me in general terms, and the duty of
my qualifications laid me under a particular obligation.

It was done before the new reformed Parliament were, or pretended to
be the supreme authority of the Nation, or had assumed the power of
Government, or were trans'd into a State; and consequently I am not
answerable to them for any opposition to them, further than the Common

* *Perjury*, *Edw. 6. 1* & *Act 15. 1*. *Star. P.C. 16. 161, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.*

Law binds to Parliaments without their head and hand, or defective in their members; and as to such offence (if it be one) this Court is not qualified to take any cognizance.

Thirdly, As to the design concerning the supple of the Life of *Ely*, it was but a bare discourse or communication, and no formal design laid, agreed unto, nor person engaged in it, so much as by promise.

And in cases of conspiracy against the Lives of Kings there were some Statutes made, that very words and communication should be reputed Treason; but all repealed, as expired.

And not thought fit by wisdom of Law-makers (having indisputable power to make Laws) to be covered hence the days of Queen *Mary*, notwithstanding their very many Treasons hatched and designed against Queen Elizabeth, and King *James*, &c.

If in the highest point of Treason, communication be not Treason against lawful Princes, certainly an offence, where the offence (such as it is) is of a far inferior nature of itself, if it had a far inferior object, as subject, concerning whom such discourse was holden.

Fourthly, As to my supposed corresponding with the King, the Lord *Higham*, and the Earl of *Gloucester*, (I trust) it was so long time, as that it falls not within compass of this Court's Commission to try, being charged as *infant mortis* of a *juror*, and my charge not exhibited to the Court of *Justices*, before the 1st of July. My last letter received from Lord *Higham*, bears date at the *Mage*, 18th or 22th of *June*, and was received in two days into *St. James*.

Fifthly, As to the drawing, signing, or sealing of the engagement, it consists of several branches.

That *de facto* I did it, and must not deny it, because I have confessed it, which was more than needed, so them who knew it without enquiry; for I dare aver, that they had their instrument by them employed, and cherish'd in betraying me to it: And have since years past had a room in my house to watch me and my motions, which I did affirm to the Lord-*President*, and he did deny it, but fact, it was no more than did become any State to do, who had so much cause to hold an active man in suspect, as they had not, having never come in, and laid down the *Catchwords*, but held to my purpoises, and was ready upon every occasion to take fire.

And this I will prove, if I have legal (or because that word is worn out of use), far dealing from the Court. And.

1. Of that I may justly infer, what will be visible enough, that it is in the State's Act, and but my Consent, and they in no danger of me, but that I should preserve myself from their new Laws; and the lapse of which I was not otherwise, or by any other action fallen.
2. As to the parts of it,
3. It consists of an Oath of secrecy.
4. An swearing of King *Charles* II. to be faithful.
5. A resolution to endeavour to make him such.
6. A resolution to the State, under the names of rebels, and opposers, who would not have him so to be faithful.

To this, as they are resolved,

The Oath of secrecy hath relation only to the not discovering the co-conspirators in that resolution, and the resolution itself being not Treason, the Oath of keeping secret that resolution is not greater than the thing resolved.

1. The thing resolved was to endeavour, but was not an actual endeavouring.

2. If it were an actual endeavouring, yet it can only be supposed, that it must be endeavour'd by a war to be levied; and the endeavour to levy a war never actually levied, is not Treason against the King, against whom only, and his relations, by the old Laws, which are Laws, a Treason can be committed: and Petty-Treason *Law* not secured for.

That a bare intention, resolution, or engagement to levy a war is not Treason, I refer myself to my Lord *Coke*; who tells us, (and he is a man of credit) in his Book (printed and allowed for Law by the Houses when they were two) that a conspiracy (and this engagement amounts not to so much, but rather to an intention only to conspire) to raise a war, (as hath been said, and so resolved) is no Treason by the Act of *Edw. III.* until the War levied, as within, or to be machined by those words in that Law (Overt Act); and if it were not Treason in these words in the original, (it falls not within the words of the translation of this new-born Law, nor, by any open deed.

As to the first and third branches of the engagement, which are interwoven, I conclude that neither of them, that is to say, neither the Oath, nor the Resolution, are Treasons either within the old, or the new Laws, either in respect of the persons against whom, or the progress made in the thing itself.

3. As to the owning of *Charles* II. it falls not within your Law; for that it is not a Publishing, Proclaiming, or publicly Declaring his Title. The words of the Act are, (*proclaim, declare, publish, or any way promote*) which promoting is matter of action more than a private owning.

And this by the Oath itself was not to be publish'd, nor could, without publishing the engagement itself, which was contrary to the Oath.

And though it may be objected, that the raising the war could not be done, but by publishing his Title, and the Engagement at last, yet that, if it be granted, was no forwarder than an endeavour; no more was this publishing, and being not done, falls not within your Act.

The criminality of the State is but guessed at by implication (for they are not named) to be meant, and I believe your Law reaches only to things moral, and not constructive only; and for the word Rebels, I hope they will not take that to themselves, and the word Opposers is a very innocent expression, and at the worst is all but a scandal.

Lastly, In this engagement what it will, yet the terms upon which I signed and sealed it were such, as that it was my act not absolute, but upon condition, and to be undone and avoided, in case of the non-engaging of hands, by the State's decay assured to be ready to do it; and at whose instance, and for whose satisfaction, it was intended to be defined at any other.

If the Court proceeds by way of Indictment, then I shall move, that those persons may be confronted, whom in my Narrative, Examinations and Letters I have named; and that I may demand of them, &c.

* Coke 3. 348. fol. 24. and 35.

† 25 Edw. III. cap. 2.

As also that *Major Parker* may be produced to be likewise demanded of, as a person by me lately, and hence my papers sent to the State, discovered to be of the Plot to betray me.

If the Court proceed by way of Articles, and upon Examinations taken against me, I desire, and that it be granted, that I may examine my defence, as in all Courts, where such proceedings were used, was allowed.

If it be objected, I that it was not used in cases of Treason, I answer, it is true; if they hold the ancient way of Trials, not, but if they proceed this way, it is but just; and otherwise the Court are at liberty to use all means, public or private, to catch me, but I have none to defend myself: so that it appears, that they seek not to do justice, but Execution.

And whether they be confronted or examined, these questions are to be propounded, either *interrogatory*, or by *Interrogatory*, and if by *Interrogatory*, I must stand upon a fair way of examination, &c.

I have none on one form, as well as one for the State's behalf, may be present, and for down the examinations or depositions; and that I may have a Copy of them as well against me, as for me, as well taken already by the State, or to be taken upon my motion.

The *Questions*.

1. Whether he knows *Major Bernard*, how long? &c. What communication and correspondence concerning me, or my actions laid between them? Whether he knows of the supposed design against the Life of *Ely*, and of the late engagement? How he knew them, and upon what reason, and to what end I discovered to him, and by whom?

2. Whether he did inform the State (or any Member of the Council) of them, and how long he hath so informed?

3. Whether he ever had in his custody the engagement under the hands and seals, and my letter to Sir *John Gell*? If so, where, and whether not at *Gray's Inn* at any being there? Whether he went first to watch me, and knew of my being there, before my being approached?

The three questions (status materialis) to be propounded to *Bernard*; and farther to him, and to *Bryles*, *Holmes*, *Atley*, *Smith*, as they are marked.

4. Whether he did propose in both designs to me, or to him? Whether I fought him, or he me? In what disposition he found me, upon the time by the Act limited for depuration? &c.

5. Whether he would tell me in the particulars of persons, confederates or money, ready to engage and to be advanced; and if not, then to what end he feigned these to me?

6. Whether the letters by him to me produced from *Smith*, and *Thorn* or *Thorn*, were true, or feigned; and if feigned, to what end, and by which for an work?

7. Whether he were fit upon me, to watch my ways and motions? And whether he were not promised, or did design unto himself profit for the discovering of me, and such whom I should bring in?

8. Whether I from'd, or ever read the said supposed design? Or was to be at *St. James* acquainted with it?

9. Whether he brought, or I fought *Bryles*, or *Holmes*? And whether confederates with him, or designed upon by him?

10. Whether my engagement were absolute, or conditional, and what I signified at my departure, and upon *Bernard's* not coming; and where *Bernard* was pretended to be, and where he really was? What promise I had concerning the return of my engagement, in case Sir *John Gell* did not engage at *Gray's Inn*?

11. Whether copies of Letters weekly showed to me were read or feigned? And if feigned, why pretended to be read?

12. Whether there were really any *Kearby*, *Darby*, or *Stuckinghamshire* men, and who, confederates? &c.

These preparations formerly made in rough notes, were transcribed and put into forms, and finished the 8th day of July 1650, by God's good assistance; notwithstanding my abundant disadvantages of close imprisonment, and want of Books, or Advice, and I commit and submit the rest to God, whom I beseech to fortify my spirit, and enlarge my understanding, when they shall come to be made use of; myself resolving to be the Law's Confessor while I live, and (if called to it) to be the Law's Martyr, when I die by the hand of the impending violence, under the specious name of Justice.

Sub terris *Affrica* religiosus,

Judica me, *Domine*, me in *ferre*, &c.

EUS. ANDREWES.

8. 7. 2. 1650. *Denial*.

His Exceptions to his Triers.

John Herle, Esq. a man who hath had his hand in blood, viz. Mr. *Barnes* *Halloway* in a duel, for which was seized, &c.

A person trying me, a Juror, and in this way of Trial he is such, ought to be a Freeman, not, not in person, but in his pre-judging opinion; which he is not, having published that the Respondent was the greatest Traitor in England; and that there was enough under his hand to hang him the Respondent.

Sir *William Bury*, *Comptroller*, *John Stone*, two of my Triers, were employed to examine the Respondent, on the 24 of July 1650, and brought with them all the evidence against him; and therefore in their capacity of my Triers, by the rule in challenges, they are challengeable, and incapable to sit.

But no regard was had to any of his Exceptions, or any Answer returned to his Questions; and he was ordered to be beheaded.

The last Speech of Col. Eusebius Andrewes, on the Scaffold at Tower-Hill, August 22, 1650.

THE Lieutenant of the Tower delivering the Colonel to the Sheriff, said, He had brought him thus far on his journey. The Colonel replied, I hope I shall consider sure in the way, not go out of it.

When he came on the Scaffold (killing the clock) he said, I hope there is no more but this block between me and Heaven. After he had been some while on the Scaffold, he spake to the people as followeth:

Christian Gentlemen and good People,

Your sufferings here this day is to be a sad spectacle, a man brought in a moment to be unlearn'd, cut off in the prime of his years, taken from further opportunity of doing service to his King, his Friends, the Commonwealth, or especially to God. It seldom happens but upon very great cause; and though, truly, if my general known course of life were enquired into, I may modestly say, there is such a moral honesty, as force may be to forward as to expellation, why this great judgment is fallen upon me? That know, I am able to give them and myself an answer, and out of this breath, to give a better account of my judgment and Execution, than my Judges themselves, or you: It's God's just displeasure towards me, for my first long unrepented of, many judgments withold, and merits lighted; therefore does my gracious Father punish me with these conditions, that he may not lose me, and I pay you all me with your prayers, that this sad may not be fruitless: that when under his rod I have laid down my life, by his staff I may be comforted, and returned into Glory.

I am very confident, by what I have heard since my sentence, there are more exceptions made against the proceedings against me, than ever I made; my Friends had a Law, and the validity of that Law is indisputable for me to say against it, or to make a question of it, I should but shame myself and my discretion. In the firstness of the Law, something is done by me, that is applicable to some clause therein, by which I stand condemned; the means by which I was brought under that interpretation, of that which was not in myself intended maliciously, being testimony given by persons whom I pay, do call, yet to profess, that I cannot condemn my Judges for judging sentence against me according to legal Justice; for equity lies in higher breaths. For my accusers, or rather betrayers, I pay, and am sorry for them; they have committed Justice's crime, I with and pray for Sir Peter's sins; and I with other people be happy, they may be taken up betimes, before they have drunk more blood of Christian men, politically, his deferring that myself.

It is true, there have been several addresses made for mercy, and I will lay the obstructions to nothing more than my own sin; and being God testifies in, (I having not glorified him in my life) I shall do it in my death, I am content.

Profess, in the face of God, particular malice to any one of the State or Parliament, to do them a personal injury, I had never; for the cause in which I had a great while waded, I must say, my engagements and pursuit in it, hath led on scraps upon my conscience; it was upon principles of Law, whereas I am a Protestant, and upon principles of Religion, my judgment rectified, and my conscience satisfied, that I have purified these ways, for which (I think God) I find no blackness upon my conscience, nor have put this into the head-roll of my sin.

I presume not to decide controversies, I desire God to glorify himself in prospering that side that hath right with it, and that you may enjoy peace and plenty here, when I shall enjoy my God.

In my conversation in the world, I do not know where I have an enemy with cause, or that there is a person to whom I have regret; but if there be any whom I cannot reconcile, under the nation of Christian men, I pardon them as freely as if I had forgiven them, yes, I forgive all the world, as I desire my heavenly Father for his Church to forgive me.

For the business of Death, it is a sad sentence in itself, if men confide with flesh and blood: But, truly, without boasting I say it, or if I do boast, it is in the Lord, I have not to this minute had one consolation with flesh about the blow of the Axe, or one thought of it, more than my passport to Glory.

I take it as an honour, and I owe a thankfulness to those under whose power I am, that they have sent me hither to a place, however of punishment, yet of some honour, to die a death somewhat worthy my blood; and that courtesy of theirs hath much helped towards the satisfaction of my sin.

I shall desire God, that those Gentlemen in that sad head-roll to be tried by the High Court of Justice, that they may find that really there, that is nominal in the Act, do High Court of Justice, or Court of High Justice, high in its righteousness, not in its severity; no more shocked with the testimony of folks that fall blind for gain. *Probes, forgive them, and I forgive them, as I desire that to forgive me.*

I tell you now to pray for me, and not give over praying until my last moment; that as I have a very great load of sin, so I may have the wings of your prayers assisting that Angel that shall convey my soul to Heaven. And I do not but that I shall there see my blessed Saviour, and my pallant Master the King of England, and another Master which I much honour, my Lord Cople; hoping this day to see Christ in the presence of the Father, the King in the presence of him, my Lord Cople in the presence of them all, and myself with them, and all Saints, to rejoice for evermore.

Dr. Swinburn. You have this morning, in the presence of a few, given some account of your Religion, and under general notions or words, have given account of your Faith, Charity and Repentance: (then speaking to the bystanders-by) if you please to hear the same questions asked here, you shall, that it may be a general testimony to you all, that he dieth in the favour of God.

(To the Colonel.) Now, Sir, I begin to deal with you; you do acknowledge, that this stroke you are by and by to suffer, is a just punishment laid upon you by God for your former sins.

Col. Answer. I dare not only deny it, but dare not have confesse in. I have no opportunity of glorifying God more, than by taking thank to myself, and I have a reason of Justice for justifying God in my own holiness, which I have incurred to you.

Dr. You acknowledge you deserve more than this stroke of the Axe, and that a far greater misery is due to you, even the pains and torments of Hell, that the Damned there endure.

Col. I know it is due in righteous judgment; but I know again, I have a satisfaction made by my elder brother Christ Jesus, and then I say it is not due; it's due to me, but acquiesced by my mediation.

Dr. Do you believe to be saved by that mediation, and no other?

Col. By that, and that only, renouncing all secondary causes.

Dr. Are you truly and unfeignedly sorry before God, as you appear to us, for all these sins that have brought you hither?

Col. I am sorry, and can never be fainthearted enough, and am sorry that I cannot be more sorry.

Dr. If God should by a miracle, not to put you to a vain hope, but if God should, as he did to Hezekiah, renew your days, what life do you resolve to lead hereafter?

Col. It is a question of great length, requires a great time to answer; men in such degrees would promise great things; but I would first call some friends to limit how far I should make a vow, that I should not make a rash vow, and to offer the sacrifice of fools: but a vow I would make, and by God's help endeavour to keep it.

Dr. Do you with health and happiness upon all lawful Authority and Government?

Col. I do prize all obedience to lawful Government, and the adverseness against them is sinful; and I do not justify myself (whatever my judgment be) for my thus venturing against the present Government; I leave it to God to judge whether it be righteous; if it be, it must stand.

Dr. Are you now in love and charity with all men? Do you freely forgive them?

Col. With all the World freely; and the Lord forgive them, and forgive me, as I freely forgive them.

Dr. You have for some late years laid down the Gown, and took up the Sword, and you were a man of note in their parts where you had your residence; I have nothing to accuse you for want of diligence in hindering the doing of injuries; yet possibly there might be some wrong done by your Officers, or those under you, to some particular men; if you had your estate in your hands, would you make restitution?

Col. The wrongs themselves you bring to my mind are not great nor many; some things of no great moment; but such as they are, my desire is to make restitution, but have not wherewithal.

Dr. If you had ability, you would likewise leave a legacy of thankfulness to Almighty God, something to his poor servants, to his lame members, to his dead members, to his dumb members.

Col. My will hath been always better than my ability that way.

Dr. Sir, I shall trouble you very little further; I thank you for all these heavenly Calumnies I have enjoyed by being in your company these three days; and truly I am very sorry I must part with so heavenly an associate; we have known one another heretofore, but never to Comradery this day; I have rather been a Scholar to learn from you, than an Instructor.

I wish this stage whereon you are made a spectacle to God, Angels and the World, may be a school to all about you; for though I will not diminish your sin, nor shall conceal or hyperbole my own; for they are great ones between God and myself, but I think there are few here have a lighter load upon them than you have, if we consider things well, and I only with them your repentance, and that measure of faith God hath given you, and that measure of courage you have attained from God, and that constant perseverance God hath crowned you hitherto with.

Col. His Name be praised!

Here the Doctor prayed with him almost a quarter of an hour, after which the Colonel turning himself again to the people, spoke as follows:

One thing more I desire to be clear in; there hath a common imputation upon the Cavaliers, that they are Papists, and under that name we are made odious to those of the contrary opinion. I am not a Papist, but renounce the Pope with all his dependencies. When the distractions in Religion first sprung up, I might have been thought apt to turn off from this Church to the Romish, but was utterly unsatisfied in their Doctrine in point of Faith, and very much as to their Discipline. The Religion I profess, is that which putteth under the name of Protestant, though that be rather a name of distinction, than properly essential to Religion: but that Religion found out in the Reformation, purged from all the Limbs of Rome, in the Reign of Edward VI. purified in the Reign of Queen Elizabeth, King James, and King Charles, that blessed Prince deceased; that Religion, before it was defiled, I am of, which I take to be Christ's Catholic, though not the Roman Catholic Religion.

Then he turned himself to the Executioner: I have no reason to quarrel with thee; thou art not the hand that throws the stone: I am not of such estate to be liberal, but here in gl. for thee, which is all I have; now tell me what I lack:

Executioner. Your hair to be turned up.

Col. Show me how to fit myself for the block, he turned up his hair, which he docket off, his hair turned up, he turned himself about to the people, and prayed a good while. Before he lay down to the block, he spoke to the people as follows:

There is none that looks upon me, though many faces, and perhaps different from me in opinion and practice, but hath something of pity in it; and may that mercy that is in your hearts, fall into your own bosoms when you have need of it; and may you never find such a block of sin to stand in the way of your mercy as I have met with.

I beseech you join with me in Prayer. Then he prayed, leaning on the Scaffold, half a quarter of an hour. Having done, he had some private conference with Dr. Swinburn; then he taking his leave of the Sheriff and his friends, kissing them, and flouting him next him, he prepared himself for the block, kneeling down, first, let me try the block; which he did. After calling his eyes, and having them very intently fixed, he said, when I say, Lord Jesus receive me, Executioner then do thy office. Then kissing the Axe, he lay down, and with as much undaunted, yet Christian Courage as possibly could be in man, did he expose his Throat to the fatal Axe, his Life to the Executioner, and commended his Soul into the hands of God, as into the hands of a faithful and merciful Creator, through the meritorious passion of a gracious Redeemer. Saying the fore-mentioned words, his head was smitten off at one blow.

Postscript. Here again.

He died very peacefully.

* Mr. Widdell in his Memorials, page 247, says, The High Court of Justice (afterwards) proceeded against Sir John Cook, and he was sentenced by the High Court, for Misprision of High-Treason, to forfeit his Estate, and to be imprisoned during his Life.
 Page 478. Capt. Abdy was sentenced by the High Court of Justice to have his Head cut off, and one Arm to be hanged, for conspiring against the Commonwealth, in the unreasonable engagement of Col. Annesley.
 Mr. Boscawen was executed at Tyburn, 21th of October 1650, according to the Sentence of the High Court of Justice; but in regard that Capt. Abdy only subscribed the engagement, but added nothing to it, he was pardoned by the Parliament.

XXV. The Trial of RICHARD FAULCONER, at the King's-Bench, in Term. Pasch. 1652. for Perjury.

ON the 12th day of July, 1652, an Indictment of Perjury was delivered to the Grand Jury at Guildhall, London, the Copy of which Indictment was as follows:

Know all, Be it remembered, that at the general Quarter-Session of the said Justice Holden for the City of London, at the Guildhall of the said City, on the 17th day of June, in the year of our Lord one thousand six hundred and fifty-two, before John Crooke, Mayor of the City of London, Thomas Arden, Thomas Anderson, and Thomas Fox, Aldermen of the said City, and others their Fellow-Judges, assigned to keep the publick Peace in the said City, and all the said and determine divers, sundry, and other misdemeanours committed within the said City, in the Court of Robert Drury, Esq. Henry, John Harvey, Peter de Alden, Esq. Benjamin Thorne, Thomas Paine, Joseph Raine, Esq. Samuel C. Jones, Richard Paine, John Drury, Esq. Robert Drury, Esq. Robert Drury, Esq. Robert Drury, Esq. and Thomas Drury, Esq. and the said Robert Drury, Esq. and others, and charged to enquire for the Keepers of the Liberty of the City, in the Authority of Parliament, and the Body of the City aforesaid, it is presented that the Bill following is true.

Know all, Be it remembered that the Keepers of the Liberty of England, by authority of Parliament, upon their oath do certify, That Richard Faulconer, of the County of Middlesex, in the County of Southwark, Gent. not having the fear of God before his eyes, but moved and seduced by the infestation of the Devil, and minding and endeavouring to bring the Right Honourable William Lord Cromwell, Baron of Haverhill-Market, in the County of Berks, in danger of the loss of his life, and of the liquidation, confiscation, forfeiture of all his Lands, Goods, and Chattels within this Commonwealth of England, the 15th day of February, in the year of our Lord God, one thousand six hundred and fifty, at the Parish of Mary the virgin, in the Ward of Cripplegate, London, before Samuel Roper, Esq. John Roper, Esq. Edward Wray, Esq. John Roper, Esq. and Arthur Spack, Esq. then being Commissioners for corresponding with Delinquents, and for managing of all and every the Estates in Delinquency, and Peppercorn, that the 15th day of April, in the said year of our Lord, One thousand six hundred and fifty, were, or then stricken off, by undue sequestrations, did, upon the said Lands, Goods, chattels, wilfully, falsely, and maliciously, of his own proper act, consent and agreement, swear, and upon his sworn oath before the Commissioners aforesaid, on the said 15th day of February, in the said Year, one thousand six hundred and fifty, then having power to administer the said Oath, then and there deposed concerning the said Lord Cromwell, in these English words following, that he to say, that about a fortnight before the conclusion of the Treaty at Breda, the Lord Cromwell, the Queen of Bohemia and her two Daughters came to Breda to the said King Charles, and went not thence till the King went to Haverhill, a baron of the Prince of Orange. That during that time, this Informant saw the Lord Cromwell drive twice in preference with the said King, and every Day with the said King at the Court there, he being there with the Queen of Bohemia, and her two Daughters, to take their leave [as they said] of the King of Scots, before he went to Scotland. That several Officers, about thirty in number, made a Petition to the said King, to arrest them in flight for him against the Commonwealth of England, by the name of heretics and idolaters, and to send them into England in Scotland for the recovering of his just rights, and restoring him in his Throne; and deputed this Informant and Colonel Drury to prevent the said Petition, who indeed drew the same. That when this Informant and some other Officers came to the Court at Breda, intending to prevent the said Petition immediately to the King's hand; but finding the Lord Cromwell very near to him, likewise the Marquis of Newcastle (who preferred his brother Sir Charles Cavendish, to kiss the said King's hand the evening before the said King's departure, who this Informant saw kiss the King's hand accordingly,) the Lord Cromwell, the Queen of Bohemia, the Queen of Scots, the Lord Cromwell, Sir, and a great number of soldiers; this Informant, with Colonel Drury, applied themselves to the Lord Cromwell, introducing him to go before the Petition to the King, and to present it to the King of Scots. The said Lord Cromwell, taking the Petition and reading the same, cheerfully said to Colonel Drury, that he would sign the same, and to the Queen of Bohemia, deliver it to her, and to say, I will speak for you. Upon which they applied themselves to the said Queen, and she preferred the Petition; after which, the King of Scots, the Lord Cromwell, the Marquis of Newcastle, and the Queen of Bohemia, with some other Lords, went into a withdrawing Room, where this Informant and company could not enter. But the Lord Cromwell came forth of the withdrawing Chamber, and told this Informant and Company, That they should be not as before from the Queen of Bohemia to their Petition, and that it had passed in the Queen of Bohemia to their Petition, who afterwards came and told this Informant and company, that the said Queen preferred their Petition, and that the King had taken order for it. The next Morning at three of the clock, the King departed, but this Informant and Company had their quarters furnished by the Princess of Orange, according to the said King's order upon their Petition, and thereby to enable them to follow the said King in the protection of those was against the Parliament of England, which was the effect of their aforesaid Petition. That this Informant saw the Lord Cromwell very often and familiar with the said King, and enter with the said King into the withdrawing Chamber, so that there the last Night the said King was at Breda, very late, which said Oath was, the said 15th day of February, in the year of our

Lord one thousand six hundred and fifty, at the Parish of Ward aforesaid, reduced into writing, and sworn before the said Commissioners, then having sufficient and lawful power so to administer the said Oath, and to take the testimony and depositions of witnesses upon their Oath in such cases. Whereas in truth neither did the several Officers, or any Officer make a Petition to the said King, to arrest them in flight for him against the Commonwealth of England, nor did several Officers, or any Officer, make a Petition to the said King to send them into England, to fight for him against the Commonwealth of England, by the name of heretics and idolaters, either in England or Scotland, for the recovering of his just rights, or re-constituting him on his Throne; nor deputed by the said Richard Faulconer, and Colonel Drury, to prevent the said Petition, in the said Court mentioned; nor did the said Richard Faulconer, with the said Colonel Drury, apply themselves to the said Lord Cromwell, intending him to prevent the said Petition to the said Queen of Bohemia to present it to the said King of Scots. Nor did the said Richard Faulconer, with the said Colonel Drury, instruct him, the said Lord Cromwell, to present the said Petition to the said Queen of Bohemia, to present it to the said King of Scots. Nor did the said Lord Cromwell take the said Petition, or send the same; nor did the said Richard Faulconer and Colonel Drury, then in the Queen of Bohemia, deliver it to her, and to say, I will speak for you. Nor did the said Lord Cromwell take the said Richard Faulconer and company, in the said deposition mentioned, that they should receive an answer to their said Petition, or that he had spoken to the Queen of Bohemia in their behalf, as the said Richard Faulconer in and by the said deposition hath deposed. And the said Jurors standeth upon their Oaths aforesaid, do say, that the said Richard Faulconer, in manner and form aforesaid, corruptly, wilfully, falsely, and maliciously, of his own proper act, consent and agreement, did contract wilfully, fully, and commit a Perjury, to the great dishonour of Almighty God, and to the great damage, loss and injury of the said William Lord Cromwell, and in contempt of the Laws of this Commonwealth, in the said example of all others in the like case offending, and against the publick peace, &c.

SADLER.

This Indictment, upon the Testimony then produced upon Oath, was accordingly found by the Grand Jury.

The same day that this Indictment was found, Colonel Drury, who had given Evidence to the Grand Jury, returned to Windsor, to Captain Blype (having been formerly examined by him concerning the Lord Cromwell, and told him, that as he was that morning going down Haverhill, he was served with a *Subpoena* to appear that day at Guildhall, London; and that he was examined there concerning the Information given by Faulconer against the Lord Cromwell; and that after he was sworn before the Lord Mayor, he gave the same Evidence to the Grand Jury, which he had formerly given to Captain Blype upon his examination. Whosoever the said Captain Blype took the Wit under seal out of his hand, with which he was served to appear, and said to Drury, How durst you be examined against the Commonwealth, and not acquit me first therewith? And said further, Mr. Mayor (meaning the Lord Mayor) had better have done something else than so have suffered that Indictment to be found; and immediately calls for a Messenger, and commits the said Drury to the Custody of one Middleton, a messenger to the Council of State, who forthwith carried Drury away Prisoner into the Strand, on the heads of the said *Middletons*, where the said Drury was kept by him in great custody, till Sunday, that the Sessions was held; by which refractory of Drury, who had Faulconer's own hand-writing to produce against himself, and to be so otherwise the most material witness against Faulconer, there could be no further prosecution upon that Indictment that suffices.

In *Midwinter* Term, course was taken to remove the Indictment by a *Conduci* into the Upper-bench, to the end the said Faulconer might be outlawed for Perjury. The Record being accordingly removed, a *Capias* in order to an Outlawry was taken out against the said Faulconer, who for several Sessions before had refused to appear. At last the said Faulconer was taken upon the said *Capias*, and carried to Newgate, where he lay for some time, but would not appear, nor plead to the Indictment, whereupon the Prosecutors for the Commonwealth were enforced to move the Court for a *Habeas Corpus*, to bring him to the Bar, that he might be enjoined to plead; and accordingly the Court required him to plead; whereupon he pleaded *Not guilty* to the Indictment.

In *Hilary-Term* following, a day was appointed for Trial upon the Indictment, at Guildhall, London, before the Lord Chief-Justice Rous, where the said Captain Blype and Faulconer appeared with their Council and Witnesses; and Mr. Raynolds also appeared in behalf of the Commonwealth with Counsel and Witnesses, and had given in the Record to have the Jury called; but it fell out, that a *procurator* of Integrity then in Court, who had given certain knowledge when and where the said Oath was taken, gave Mr. Raynolds notice, that the Oath given to Faulconer, was administered unto him at Windsor, in *Midwinter*, and not at Haverhill, as he had said in London; and therefore the place being mislaid in the Indictment, a *Writ* of *Coram non Jurato* could not find a first day in *Midwinter*; whereupon Mr. Raynolds immediately withdrew the Record for that term, and gave a stop to the Trial.

No

No time was mis-spent to recover this Mistle; for within two Days a new Indictment was drawn, and preferred to the Grand Jury in *Abbeys* for [Sir Henry Blunt being Forceman], where the Indictment was found; and was as followeth:

History Term, 1652.

Abbeys. Before this time, that is to say, upon Tuesday next after the Morning of the Publication of the *Virginia* story, the same Term, before the Keepers of the Liberty of England, by Authority of Parliament, in the Upper-Bench at *Windsor*, by the Oath of twelve honest and lawful Men, it is presented, That *Richard Faulconer*, late of *Windsor*, in the County of *Surrey*, Gent. not having the Fear of God before his Eyes, but moved and seduced by the Insinuation of the Devil; and wilfully and unlawfully to bring the Right Honourable *William Lord Cromwell*, Baron of *Hampden-Market*, in the County of *Windsor*, in Danger of the Loss of his Life, and of the deprivation, Confinement, and Forfeiture of all his Goods and Chattels, Lands and Tenements, within the Commonwealth of England, the 10th Day of February, or the Year of our Lord God, one thousand six hundred and fifty, at *Windsor*, in the Parish of *St. Andrew* in the Field, in the County of *Windsor*, before *Samuel Lord Egmont*, *John Lord*, *King Edward*, *William*, *Edw. John*, *Baron*, *Edw. and* *Archer*, *Baron*, *Edw.* then being Commissioners for composing with Deputies, and not minding of all and every the Duties of Delinquents, and Popish Recusants, that the 18th Day of April, in the said Year of our Lord God, one thousand six hundred and fifty, were, or then after should be under Segregation, did, upon the holy Evangelists, corruptly, wilfully, falsely, and maliciously, of his own proper Act, Confess, and Agreement, swear, and upon his corporal Oath, before the Commissioners aforesaid, on the said 10th Day of February, in the said Year one thousand six hundred and fifty, then having sufficient and lawful Power to administer the said Oath, and to take the Testimony and Depositions of Witnesses upon their Oaths in such Cases, then and there deposited, That several Officers, about thirty in Number, made a Petition to the said *John Lord Cromwell*, to entreat him to fight for him against the Commonwealth of England, by the Name of *barbarous and infamous Rebels*, either in England or Scotland, for the recovering of his just Rights, and re-imbursing him in his Throats. And did also then and there, corruptly, wilfully, falsely, and maliciously, before the said Commissioners, swear, that the said Officers deposed him, the said *Richard Faulconer*, and *Colonel Drury*, to persecute the said *John Lord Cromwell*, who, as the said *Richard Faulconer*, then and there, corruptly, wilfully, falsely, and maliciously, before the said Commissioners did swear, indeed drew the same; and did also then and there, corruptly, wilfully, falsely, and maliciously, before the said Commissioners, swear, that he, the said *Richard Faulconer*, with *Colonel Drury*, applied themselves to the Lord Cromwell (treating the aforesaid *William Lord Cromwell*), intending him to present the said Petition to the Queen of Bohemia, to present it to the King of Scots; and did also then and there, corruptly, wilfully, falsely, and maliciously, before the said Commissioners, swear, that the said *William Lord Cromwell* taking the said Petition, and reading the same cheerfully, said to *Colonel Drury*, and him the said *Richard Faulconer*, *These is the Queen of Bohemia, deliver it to her, and I will just for you.* And that the said *William Lord Cromwell* did present the said Petition; and did also then and there, corruptly, wilfully, falsely, and maliciously, before the said Commissioners swear, That the said *William Lord Cromwell* also told him the said *Richard Faulconer*, and Company, *That they should require an Answer from the Queen of Bohemia in their Petition, and that he (treating the said *William Lord Cromwell*) did speak in the Queen of Bohemia in their behalf.* Whereas in Truth neither did several Officers, or any Officer, make a Petition to the said King, to entreat him or them, to fight for him against the Commonwealth of England. Nor did several Officers, or any Officer, make a Petition to the said King, to entreat him or them to fight for him against the Commonwealth of England, by the Name of *barbarous and infamous Rebels*, either in England or Scotland. Nor did several Officers, or any Officer, make a Petition to the said King, to entreat him or them, to fight for him against the Commonwealth of England, by the Name of *barbarous and infamous Rebels*, either in England or Scotland, for the recovering of his just Rights, as re-imbursing him in his Throats. And whereas in Truth, the said *Richard Faulconer*, and *Colonel Drury*, were not deposed by the said Officers to present the said Petition, in the said Oath aforesaid; and whereas in Truth, he the said *Richard Faulconer*, with *Colonel Drury*, did not apply themselves to the said *William Lord Cromwell*, intending him to present the said Petition to the Queen of Bohemia, to present it to the said King of Scots. Nor did the said *Richard Faulconer*, with the said *Colonel Drury*, intend him the said *William Lord Cromwell*, to present the said Petition to the said Queen of Bohemia, to present it to the said King of Scots. And whereas in Truth, the said *William Lord Cromwell* did not take the said Petition, nor read the same; nor say unto the said *Colonel Drury*, and him the said *Richard Faulconer*, *These is the Queen of Bohemia, deliver it to her, and I will just for you.* And whereas in Truth, the said *William Lord Cromwell* did not tell him the said *Richard Faulconer*, and Company, In the said Deposition mentioned, that they should receive an Answer from the said Queen of Bohemia to the said Petition, nor that he the said *William Lord Cromwell* did speak to the Queen of Bohemia in their behalf; as the said *Richard Faulconer* is and by the said Deposition hath deposed. And so the Jurors aforesaid, upon their Oath aforesaid, do say, That the said *Richard Faulconer*, in Manner and Form aforesaid, corruptly, wilfully, falsely, and maliciously, of his own proper Act, Confess, and Agreement, did commit wilful, false and corrupt Perjury, to the great Dishonour of Almighty God, and to the great Damage, Loss, and Injury of the said *William Lord Cromwell*, and in Contempt of the Laws of this Commonwealth; to the evil Example of all others in the like Case offending, and against the public Peace, &c.

[The Reason wherefore this Indictment did not recite the Oath in due words, as in the former Indictment, but signed the Perjury in the material Parts of the Oath, was by Reason it came lately to Knowledge, that the original Oath could not be found, and therefore the Oath was to be proved by the Entries so the Book of Parliament, and in *Halsbury-Hall*, and by the Testimony of the Persons who administered the Oath.] The next Day after the Indictment was found, the Prosecutors for the

Lord Cromwell moved the Court for a *Habeas Corpus*, to bring *Faulconer* to the Bar to plead to the Indictment; who being brought into Court, desired Time to plead till the next Term: Whereupon the Court made this Order:

That the said *Faulconer*, having now in Court appeared unto the Indictment, should have Time to plead unto the same, until the Beginning of the next Term, at that the *Justice* then upon may be tried at the Bar in open Court the same Term.

Term. Pasch. 1652.

Faulconer having all this Vacation neglected to appear, or plead to the Indictment, the Prosecutors for the Lord Cromwell were enforced again to move for another *Habeas Corpus* to bring *Faulconer* to the Bar, to appear, or plead to the Indictment; who appearing, desired longer Time to attend his Counsel, which the Court granted accordingly: And the ordinary Rules of Court were given unto him for the temporary Days of pleading, or Judgment to be entered against him; and the very last Day, when the last Rule was out, and not before, he pleaded *Not Guilty*. And the Court ordered, That the Issue upon the Indictment of Perjury against the Defendant, be tried at the Bar upon Friday on the Morrow of the Assizes of our Lord, and that the Sheriff of *Middlesex* to attend *Archer*, *Baron*, *Edw.* with the Book of Freeholders forthwith; so that an Indifferent Jury may be returned between the said *Faulconer*, and the said Defendant, to try the Issue aforesaid, by Consent of the Parties on both Sides.

Mr. *Brayley* accordingly appointed the Sheriff to attend him the next Day in the Afternoon with the Book of Freeholders; who accordingly attended the Jury, and Notice was given by the Sheriff, requiring three to appear at the Day of Trial.

Friday, May 26, 1652.

THE Jury appearing according to Summons, and *Faulconer* being brought in Custody, the Court proceeded to try the Issue, and ordered the Indictment to be read; which being afterwards opened by Mr. *Brayley*, the Evidence was managed by Mr. *Admory*, Mr. *Hale*, Mr. *Taylor*, Mr. *Widd*, Mr. *Phillips*, Mr. *Bellman*, and Mr. *Drury*; who were of Counsel for the Commonwealth against the said *Faulconer*.

Before the Counsel for the Commonwealth proceeded to produce any Witnesses, they offered unto the Court and the Jury forming in general concerning the Indictment. That the Indictment was for the Crime of Perjury, wilfully and corruptly committed; that *Faulconer* makes in Oath, that there was a Petition delivered, in which there was a very short Recitation (as he swears) upon the Parliament, by the Name of *barbarous and infamous Rebels*, he swore he was desired to deliver it, being drawn by himself and *Drury*, and (subscribed by) the said Officers; that in order to the delivery thereof, they did require the Assistance of the Lord Cromwell, that he promised to speak for them, and brought them an Answer: But they hoped to prove unto the Jury, that this Oath which *Faulconer* did take was very false, that it was by Deceit, a Deceit for Money; that the Consequence of it was very notorious, the Ruin of that Gentleman, of his Estate, Fame and Fortune; that Witnesses will be produced to prove what in Truth the Petition was. There was a Petition delivered, but not a Petition to this Effect at all, and *Faulconer* knew the contrary. We shall produce what it was, and that under his own Hand, whereby it will appear that there was no such Matter in it as he had deposed; the Witnesses themselves will best speak the Particulars.

For the opening of some things concerning this Oath of *Faulconer*, it is to be observed, he took this Oath before the Commissioners of *Halsbury-Hall*, at *Windsor*, and it was there reduced into Writing, and a Transcript was made of the original; which Transcript was sent to the Council of State, and they ordered the same to be reported to the Parliament; and being reported there, is entered in the Journal-Book, and there remains a Record in Parliament.

The first thing, therefore, satisfied upon by the Counsel for the Commonwealth, was the proving of a true Copy of *Faulconer's* Deposition, in respect the original was lost, or rather mislaid by *Faulconer*. To prove the same,

A Copy thereof was produced in Court, which agreed verbatim with that Deposition of his, which was filed upon Record at *Halsbury-Hall* (the proper Court where it ought to remain): And though that upon the File was but a Copy, yet it was Evidence of that Deposition he was sworn unto by them. But this was opposed by the Counsel for *Faulconer* as not sufficient Proof, and thereupon a Copy of an Order of the Council of State, of *March 6, 1650*, was produced unto the Court, whereby it did appear, that the Depositions against the Lord Cromwell had been transmitted to the Council of State by the Commissioners at *Halsbury-Hall*. And it appeared further by the said Order, that Mr. *Atterbury-General* was appointed by the Council of State to report these Depositions to the Parliament, he transmitted to that Council by the Commissioners at *Halsbury-Hall*. And the Attorney-General being sworn in Court, did declare, that he reported no other Depositions to the Parliament, than what he received from the Council of State; and that the Depositions produced to him in Court (whereof the said *Faulconer's* was one), were endorsed with the Hand-writing of the Lord *Bradshaw*, then Lord-President of the Council of State; and that the Vices of Confession of the Lord Cromwell's Estate did pass upon the Report of the said Depositions, which he presented to the Parliament from the Council of State.

Mr. *Forsyth*, Chief-Clark to Mr. *Radcliff*, Clerk of the Parliament, did depose in Court, That the very same Depositions showed in Court to Mr. *Atterbury-General*, endorsed with the Lord *Bradshaw's* Hand-writing, were entered in the Journal-Book, as read in Parliament that Day, when Mr. *Atterbury-General* did make his Report unto the Parliament; which he knew the better to be true, for that he received the same from the Hands of Mr. *Radcliff*, or Mr. *Daniel*, the Clerk-Assistant in Parliament, the same Day they were read in Parliament, to be entered in the Journal-Book: And that he did enter the same accordingly with the Votes of Confirmation, which passed upon the reading of those Depositions. And afterwards he and Mr. *Daniel* did examine the said Depositions, wherein the said *Faulconer's* was one, after the same were entered into the Journal-Book.

Y y

And

And for the further satisfaction of the Court, he produced the Journal of Parliament, wherein the said depositions (and particularly that of *Faulconer*) were entered, which were read in Court out of the Journal; whereby it did appear that the depositions of the said *Faulconer*, *Kingsburgh* and *Repley* were entered into the said Journal, and did agree with the Copy of *Faulconer's* and their depositions remaining at *Halsburgh-hall*, and with the Copy reported by Mr. Attorney-General from the Council of State to the Parliament.

Mr. *Wynslow*, one of the Commissioners at *Halsburgh-hall*, being one before whom the said *Faulconer* was sworn, did testify upon Oath in Court, that the deposition of *Faulconer* now produced unto him, and whereupon there was an endorsement of the Lord *Drury's* handwriting, was, as he did believe, a true Copy of that deposition in which the said *Faulconer* was sworn to; *Whitlock*, that he had his own hand subscribed thereto (as examined by him to be a true Copy), and that it was used with the Commissioners at *Halsburgh-hall*, when they take examinations concerning any Person of Quality, to appoint one of themselves to go from the Table to examine the Copy by the Original: but whether, when he subscribed his name to the Copy produced unto him, he did examine the same by the original deposition before it was first for away by the Council of State, or afterwards, or by the Transcript remaining upon the file as a Record at *Halsburgh-hall*, he could not positively remember; but remembered that the Copy, to which his hand is subscribed, is examined by him, to be a true Copy, was taken when they had the original in custody; but cannot certainly say so.

Mr. *Barnard*, another of the Commissioners at *Halsburgh-hall*, before whom also the said *Faulconer* was taken, did testify upon Oath, that to the best of his remembrance, the particulars mentioned in *Faulconer's* depositions then read in Court, were the same to which the said *Faulconer* was sworn unto by himself and the rest of the Commissioners, though he could not remember every Syllable and Letter.

Mr. *Wynslow* and Mr. *Barnard* were again produced to declare, what they did remember concerning this clause in the deposition of the said *Faulconer's* (viz.) *That several Officers, about thirty in number, made a Petition to the King of Scots, to intercede with him for him against the Commonwealth of England, by the name of barbarous and inhuman Rebels, either in England or Scotland, &c.* And that upon Mr. *Wynslow's* declaration unto the Court, that he did well remember that clause in *Faulconer's* deposition when he was sworn thereto; but whether the number of Officers were thirty or no, he could not tell, but a certain number of Officers were named.

Mr. *Barnard* did declare the like, but whether the word *inhuman* was in he could not positively say, but was certain that *barbarous Rebels* was contained in that clause; and that when *Faulconer* was sworn unto the same, it was first read unto him, and attended in several places, and then he swore it to be true. And Mr. *Barnard* said, that he did remember his deposition the better, for that himself and the rest of the Commissioners had several debates upon it at *Halsburgh-hall*, whether they should therewithal, frequently, or secure the Lord *Cromwell's* silence.

Having thus used the Oath of *Faulconer's* silence, which was taken at *Whitlock-hall*, and brought to *Halsburgh-hall*, afterwards brought from *Halsburgh-hall* back again to *Whitlock-hall*, and from *Whitlock-hall* to the Parliament, and there entered in the Journal-Book, as the grounds upon which the Votes of Confiscation did pass; and having withal proved that particular clause of *barbarous and inhuman Rebels*, &c. the Counsel for the Commonwealth concluded as to that point, and left it to the Jury to judge, and to *Faulconer* to produce the original, which he hath got into his custody, if he can find any variance in it from the deposition recited in the indictment.

And to prove that *Faulconer* had got the original Oath into his custody, Mr. *Knigh*, a Witness, was produced, who did testify upon Oath, that being in the company of *Faulconer* he did show him a writing written with Captain *Bijley's* own hand (so far as he could judge one man's hand to be like another), and that *Faulconer's* name was subscribed therewith, and that *Faulconer* told him, the said *Knigh*, that that writing was the original deposition he was sworn unto against the Lord *Cromwell*, and which he kept on purpose to keep Mr. *Bijley* in awe (as *Faulconer* being then in necessity and want); and that the said *Faulconer* further said unto him, the said *Knigh*, that he had received 20*l.* for the business of the Lord *Cromwell*, and was to have more; but said he delivered 200*l.* for what he had done.

In the next place, the Counsel for the Commonwealth did apply themselves to prove the falsity of the Oath (viz.) That there was no such thing in the Petition mentioned by *Faulconer* in his deposition, [as that thirty Officers did petition to be interceded with for the King of Scots against the Commonwealth of England, by the name of barbarous and inhuman Rebels, &c.] And being to prove a Negative, they applied their proof to a certain time and place, which *Faulconer* in his own deposition did prove for them; for he swears, that the Petition was delivered the Evening before the King of Scots went from *Brady*, and that the said King went away the next morning at three o'clock. He swears further, that he and *Drury* drew the Petition, and were deputed to deliver the same; accordingly they applied their evidence.

Proofs as to the Falsity of Faulconer's Oath.

MR. *Hershel* being produced, did testify, that the night before the King of Scots went from *Brady*, Colonel *Drury*, Captain *Brifley*, and divers others, were with a little their Petition to remember the King of a former Petition which they had delivered, that some excuse might be taken, that their affairs which they owed in the Town might be paid, that their Landlords where they lodged might not suffer, for they were not able themselves to pay them; and that he went along with them to the great window just over the moat, and there he, the said *Hershel*, did fix his hand unto the same, and that he was in the Chamber when *Drury* and *Brifley* came in to deliver the Petition, in which there was not a word that concerned any thing, but only the relief of their present necessities. Being asked by the Court, if there were not a mention of *barbarous and inhuman Rebels*, he answered, not any thing of that nature was in it. He further said, that this Petition had reference to a former Petition he was not acquainted withal, nor was his hand fix to the former Petition.

Captain *Brifley* being produced did testify, that there were divers Gentlemen to great distress met together in Colonel *Drury's* Chamber, at the time of the Treaty of the said King with the Commissioners at *Brady*, and that

among other things it was agreed to draw a Petition to the King; which was drawn in Colonel *Drury's* Chamber, expressing their necessities, that the People of the Town might be relieved, and that the Petitioners might not be left to perish: that going to deliver it, they met with Secretary *Lang* by the way, who told them it was to no purpose, for there was no money come in. Afterwards the Petitioners had notice the King was to depart from *Brady*; whereupon they met together again, and went into the further end of the Gallery, to draw a short Petition, to put the King in mind of his Promise to Secretary *Lang*, concerning the People of the Town of *Brady*, that they might be relieved, and the Petitioners relieved, which Paper he the said *Brifley* delivered to the State King, who drew it on a Table; and doing so, they stood all around, being likely to be left in distress; and unexpectedly came in the Lord *Cromwell*, whereupon he, the said *Brifley*, having long lived in the County, and knowing him to be a lover of boldness, he spoke unto him, and said, Sir, we are a company of poor distressed Gentlemen, likely to be left here in misery (he said, *Well*); and the next morning the King went away, without giving any relief unto the Petitioners. The Court demanded of *Brifley*, whether there were no such matter in it as *barbarous and inhuman Rebels*? He answered, that he read it, and was sure there was no such thing in it, the whole scope of it being to relieve their necessities, which was the occasion of that Petition, being demanded again by the Court, if *barbarous and inhuman Rebels* were not in the Petition? he answered, No, not any such words at all, nor to make any mention of the Petitioners.

Colonel *Drury* was in the next place produced, who testified, that being at *Brady*, Lieutenant-Colonel *Brifley*, Major *Faulconer*, Major *Hall*, Captain *Kingsburgh*, and divers others came to his lodging, and told him that they were in a condition of starving, and desired him that he would assist them to draw a Petition to the King of Scots, to relieve their necessities, or else they must perish; that the said *Drury* being in that condition consented unto it, and in his Chamber, in his son's paper-book, the Petition was drawn, Major *Faulconer* writ it with his own hand; which, said *Drury*, I have here to show, and so produced the original under *Faulconer's* hand unto the Court; in which Petition (said *Drury*) we desired some relief from his Majesty, shewing how we had served the former King, and in what necessities we were. That they were afraid to deliver it to Secretary *Lang*, for that they were told that the King had not a Particle to relieve himself, and it would be a vain thing, said *Lang*, to deliver it. That they followed Secretary *Lang*, and followed him daily for three weeks together, and till he put them off, and the day before the King went from *Brady*, they drew a short Petition to mind the King of his promise to Secretary *Lang*, and to desire that the Inhabitants of *Brady* that had relieved them, might not be undone; that *Brifley* was deputed with him to deliver it, and he accordingly delivered it to the King; that the King laid it down upon the Table: in steps the Lord *Cromwell*; then Captain *Brifley*, having trailed a Pike under the Lord *Cromwell*, went to him, and told him there were many Gentlemen ready to starve, and desired him to speak a favourable word to the Queen of *Belonia*. To which the Lord *Cromwell* answered, *Well*, as *Brifley* then told him. The next morning the King of Scots went away, and to nothing at all was done for the Petitioners; that original Petition, which *Drury* produced unto the Court, of *Faulconer's* own handwriting, and in the presence of *Faulconer*, was publicly read in Court, and was as followeth, viz.

May it please your Majesty,

THE great kindness we have always had of your Majesty's present consideration has been the prime cause of our long silence; but now our necessities are grown to great and insupportable, that we are informed either to petition or perish: Most humbly desiring your Majesty, to take into your princely consideration our extremities, who have been ever ready to prostrate their Lives in your Majesty's Royal Father's service: not so much willing and ready to prosecute the same in what your Majesty shall command: Most humbly petitioning your Royal Order, that some course may be taken for our present subsistence, that our future endeavours may not be hindered in that unavoidable calamity, which our Loyalty hath reduced us unto.

And we shall cordially pray for your Majesty.

The Court demanding of Colonel *Drury*, if the said Petition was *Faulconer's* own hand-writing; he said *Yes*, and looking back upon *Faulconer*, said, he cannot deny it: I did dictate unto him, and *Faulconer* did write it in my Chamber, and that is the very original that was to be drawn, and being in my hand, it was afterwards delivered to Secretary *Lang*: the other that was delivered was a memorial, to put the King in mind of his promise when money came in. And *Drury* further said, that when he was examined by Mr. *Bijley*, he did give in his Examination the contents of the first and latter Petition; and said, he did express himself at that time of his Examination by Mr. *Bijley*, to the same effect which he had now done in Court. Being asked by the Court, if the words *barbarous and inhuman Rebels* were in that first petition? the said *Drury* answered, that *Faulconer* moved to have *barbarous and inhuman Rebels* inserted into that Petition drawn by himself, but was answered by the Petitioners, that as they were Soldiers of fortune, it was unusual language, and so they would not give any use to it. Being demanded by the Court, who was deputed to deliver the said Petition, he said, Captain *Brifley* and himself, in regard he had many wounds at *Cromwell's* death, that the King might excuse him his case the more; and that he, the said *Drury*, was also deputed with *Brifley* to deliver the same, because he was known to the Queen of *Belonia*, and some other persons of quality, and *Faulconer* was not at all deputed. Being asked, if the Lord *Cromwell* was present at the delivery of the first Petition? he answered No, the Petition was delivered three weeks before; but the Lord *Cromwell* was present when the said Petition was delivered, to mind the King of his promise. The said *Drury* further informed the Court, that afterwards *Faulconer* being discontented that he got no money, said, as he went going into Town, *This is a barren Town, that we dwell in, in this state, to follow a thing they call a King (God damn me). I would go into England, and do all the mischief I can.*

Proofs as to the Credit of Faulconer.

IN the next place, the Counsel for the Commonwealth did apply themselves to offer proof as to the credit of *Faulconer*. Mr. *Windsor*, of Chancery, Attorney at the Common-law, being sworn, did testify to this purpose

purpose; That being in his chamber at *Closter's* Inn, about this time twelve-month, *Faulconer* came to him, asked how fared the Countryman now *Peterfield* did? That he heard *Faulconer* where he had been of so long a time? Who answered, he had been as the *Low* Chastity, had seen some Lords in Council for the King, that he had been twice against the Lord *Craven*, which would bring a great deal of advantage on the State; that he had money for the doing of it; and said, that he had received already *Shill* (it was that sum here mentioned, said Mr. *Widdridge*, to the best of his remembrance), but *Faulconer* said, he did expect a greater reward; that the said *Faulconer* hath been as wicked a man as any in England; that he spent his kint, and left the Country, did wicked acts while he was there: that being at *Peterfield*, he drank an health to the Devil in the middle of the Street, of which information being given, we went in the Justice of the Peace at the Town, and had him bound over to the Sessions for doing of it; but said, he did not see him since the health to the Devil.

Mr. *Justice* of *Peterfield* being produced, testified, about five years ago, *Faulconer* was eating and drinking of healths, that he did drink a health to the Devil, and said this, I came from my Brother's *Epistle* and my own; I will never move money, for what there is any in the Nation, I will get it one way or other, and I will do something of *Refuge* to be talked off; that the name of *Faulconer* find over die. Being asked in what manner he did drink the health? He answered, in the Street, down upon his knees; that he was present, and thousands can witness it, that he was had before a Justice of Peace for it.

James *Craven* being sworn, did testify, that in *May* 1645, after the Siege at *Exeter*, it was his nature to fall into the company of *Faulconer*, and as he was in the cellar, was in a tavern, drank his, and was as follows: takes a two-and-twenty *Shilling* piece of Gold. I was by him, said this, *God damn him*, and said loudly, he will be long to find in *Hein*, and these words he used frequently to *Bliss*, *Woman*, and *Child*, *ligger*, *ligger*, *ligger*; and correct him for it, he would say, damn die, damn and words, he would do it. Being asked by the Court, if *Faulconer* did any thing upon him? He answered, No, he was able to deal with as good a man as he.

Mr. *Hagley* hath often heard *Faulconer* swear, damn him and find him, and such wicked expressions.

Mr. *Burdell* did testify, that he heard *Faulconer* say, our *Saviour* Christ was a *Deaf*, and a *Corrupter* of the Law, and carried a *bag* of *Tails* after his Father.

After being produced, did declare, that *Faulconer* confided to him, that he had got money of a man, by procuring one to prosecute Captain *Bishop*; it was thus (as *Faulconer* told him): I was a Citizen, as he remembered *Faulconer* said, did desire *Faulconer* to get Captain *Bishop* to do a business for him, which Citizen did promise him twenty pound, ten in hand, and ten afterwards: whereupon *Faulconer* said he got one to prosecute Captain *Bishop*, and to go along with him to the Common: which man so prosecuting Captain *Bishop*, promised the Citizen, upon the account of *Major* *Faulconer*'s good services for the publick, to afford him his best assistance in the effecting of what was desired in his Petition, which story *Faulconer* himself told. And *Faulconer* further said, that Captain *Bishop* had said him ill, in keeping him so low in money; that he had it one time in his thoughts, as Captain *Bishop* came from the Committee-chamber, through the Guard-chamber, down the stairs, to have cut his throat. Being asked by the Court, what money *Faulconer* had of Captain *Bishop*? He answered, he paid to *Faulconer* with his own hands, by Captain *Bishop*'s direction, twenty pound at one time, and about thirty pound more at other times, in several portions; that *Faulconer* confided to him he had twenty pound afterwards. Being demanded what it was for he gave that money? He said, I will set first to that, I cannot find it that.

Captain *Baldwin* being produced, did testify, that about three or four years ago, he came to *Faulconer*'s lodging, and saw him write a letter in his chamber, and that he went to it as it had come to him: *John* *Bargy* from *Jersey*, and for *Bargy*'s name to it, and *Faulconer* would have had him, the said *Bargy*, to carry this letter to one *Capt. Bishop*, who belonged to the Council at *State*, and to say he had the letter from one of *Bryde*, and got some money of *Bryde* for that intelligence mentioned in the letter, of which the said *Baldwin* was to have half; but he, the said *Baldwin*, refused to go with the same, knowing it to be unjust.

Mr. *Powell*, a Justice of Peace of the County of *Midshire*, did testify, that the said *Faulconer*, the 20th of *March* 1645, was committed to *Midshire* Gaol, by *Thomas* *Widdridge*, Mr. *Baldwin*, and Mr. *John* *Julius*, of the Peace, upon suspicion of Felony, Robbery and Murder, and tendered a Certificate thereof in writing unto the Court.

The Defence made on the behalf of *Faulconer*.

THE evidence being given on the behalf of the Commonwealth, Mr. *Widdridge*, Mr. *Lewis*, Mr. *Lubner*, and Mr. *Hagley*, of Council for *Faulconer*, did offer something to the consideration of the Court, before they did produce their Witnesses; viz. that although it concerns every man that Perjury should be punished; for every man's life, liberty, fortune and estate depends upon an Oath, and is these times it is somewhat dangerous if they should be forewarned so on the other side, if *Faulconer* be not forewarned, it is but just he should be acquitted. That the Council for the Commonwealth have endeavored to prove that there was a Petition, and that there was the sixth words in the Petition as are suggested, and have endeavored to impeach the credit of *Faulconer*: that they have produced a copy of *Faulconer*'s Oath, which ought not to be admitted; because it is but a Transcript of a Transcript, a Copy of a Copy, brought from *Heidelberg* to the Council of State, and from the Council of State to the Parliament, and there the Copy is entered in the Journal-book. And the Witnesses that have been produced, do not swear positively to the Oath as it is in writing, and one particle may turn the whole faith of an Oath; and though their words *barbarous* and *blasphemous* words were in it, yet how it is applied, and how the sense of it falls, it cannot be judged,

but by the original writing itself, and it concerns the Council for the Keepers to produce it. How it should come into *Faulconer*'s hands, there is no account given, but by one *Knight*, who faith *Faulconer* threw him a string, which *Faulconer* had was his [original] deposition against the Lord *Craven*, but the credit of *Knight*'s testimony is left to the Jury. It is found, that that copy produced in Court was examined; but Mr. *Widdridge* does not positively say it was examined by the original, when in their custody.

That as to the Witnesses produced against the credit of *Faulconer*, they did hope to counterpoise his life now, as of a man that might be credited; that in the Petition delivered at *Brake* there is something of these words, though there be not *barbarous* and *blasphemous* words, which was but a nominal thing yet the producing of themselves to prosecute the cause, is desired, may be offered, though the words be not there, yet the sense doth bear it. That the rule is for a man to stand with *Faulconer*, who was employed at the Court as *Brake* as an *advocate*, as a spy; and at last return in giving an account of it. After which at *Brake*, let something fall concerning the Lord *Craven*, who was a spy in him; and that what *Faulconer* delivered in his deposition was with qualifications, as he did believe, to his best remembrance, and the like.

Henceupon Captain *Bishop* was produced on the behalf of *Faulconer*, as a Witness, whose discourse was long, and consisted of three parts.

1. It took some how the Council of State sent for him from his habitation at *Bryde*, to be employed in matters of great trust; and afterwards what trust was reposed in him and Mr. *Law*, in order to the safety of the Nation.

2. By way of argument on behalf of *Faulconer*, he did declare what services *Faulconer* had done for the Commonwealth, and that *Faulconer* was one by whom this Commonwealth was kept safe at this hour, and by whom he enjoyed his life: and what an ill request this was to be thus proceeded against.

3. He third part of his discourse was, to declare what particular designs the State formerly had in hand, and what designs the enemy had against the State; and what service he did to countermease the enemy in their designs: the fall of the three being not (as was conceived) so wisely spoken in publick, and which would be more unfit to be in print, shall therefore here be put over in silence, as also what Captain *Bishop* said at large concerning the two first particulars, in respect they are so poorly pertinent to be applied, as to the perjury in question.

An account only shall be therefore given what Captain *Bishop* properly spoke at *Winche*.

As *Winche*, Captain *Bishop* said, he had never seen *Faulconer* in drink, or misbehaved him; but ever observed him as a sober man; that he saw *Faulconer*'s information [which *Faulconer* did deliver as the substance] and that he must say, that the words [as in the effect] should have been put in, and that it was his fault they were not so; and he could not tell but that they were in; that the Commissioners at *Heidelberg* had been desired to come to *Winche* to administer an Oath to the said *Faulconer* privately, lest danger should befall the Witnesses if they were not so.

That *Heijde* was formerly an Agent for the Prince, and was to receive orders from *Van Gool* in the Tower, and was ordered to be sent by the High Court of Justice: that Colonel *Drury* was a Papist in arms, and being brought before him to be examined, still had the Lord *Craven* in his mouth, before he was asked a question.

The like of *Bryde*. He said, that before *Drury* and *Bryde* came from beyond seas, his Agent gave him notice of their coming, and thereupon he had wait for them, and caught them; that *Drury* said, when he was examined, that he had not a penny of money; that he did not commit him to prison, but took his people, and in consideration gave him two *Shillings* and six-pence for his supper. He said further, that *Drury* did contradict himself as what he had formerly informed the Council of State, and to that end produced in Court the copy of *Drury*'s information; which being read in Court, agreed with the testimony which *Drury* then gave to the Jury.

[By way of signification sheweth, That *Drury*'s and *Baldwin*'s Informations, which Captain *Bishop* had taken about twelve months since, and which tended to clear the Lord *Craven*, he received till this hour that he produced the same in Court, and never transmitted this into Mr. *Widdridge*'s to the Parliament, although before the Bill of *State* did pass, he did transmit *Baldwin*'s and *Knight*'s Informations to the Parliament, and which he apprehended made enough for the Lord *Craven*.]

Captain *Bishop* further said, that whereas it was objected that *Faulconer* had money, he answered, that it is great reason he should have money, for there was a real effect of the safety of the Commonwealth by his services; that notwithstanding any thing hath been sworn against *Faulconer*, as before.

Captain *Bishop* speaking again of *Faulconer*'s deposition, that the words [as in the effect] should have been added, the Court asked him, whether *Faulconer* gave any directions to express these words in his Examination? To which Captain *Bishop* made answer, That the deposition he made, was the substance of things, and he put it in words, and that [as in the effect] if they were not in, should have been so. The Court again asked him, if *Faulconer* did direct him to put in these words [as in the effect]? He replied again, he did deliver the whole, as the effect of it.

Captain *Bishop* being further asked by the Court, if he were present when the Commissioners gave the Oath, and took what *Faulconer* had in way of information? He answered, That he prepared it before the Commissioners were first so, and then they had only the administering the Oath; and said again, I prepared the Information which he made Oath of, thereupon Mr. *Widdridge* desired leave to inform the Court, that when he and the rest of the Commissioners came to *Winche* to administer this Oath, being first for to that end, the information was ready prepared by Captain *Bishop*, and having no Regular with them, they made use of Captain *Bishop*, being well skilled in the use of his pen, to write over the deposition: for though he had prepared the deposition, the Commissioners did see occasion to alter much of it; and it was writ over again, and then read to *Faulconer*, and attested by him, and subscribed unto by the hands of all the Commissioners then present; and the Oath which we gave him was this, *Whether the deposition thus drawn, and that which he*

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C. *Queen Kanching* having produced, did signify, that a Petition was drawn by *Wido*, and signed by him, *Fooden*, and others, to be presented to the *King of Soto*; that it was to portance of paying money to discharge some quarrels, and to enable them to serve the King, but known not by whom it was delivered, that *Somay* and *Wido* were there, and money was given, but that neither *Wido* nor *Somay* were the persons who delivered it; that there was another Petition drawn, but by whom delivered he knew not, only he saw a paper in the *Queen of Sakote's* hand, which was told him was the Petition; and after a *Queen* of an hour's discourse with the King, he delivered it to the King, but they never received any money upon that, and he never saw any more of the *Queen* of *Soto* at all, nor heard it said, that it was the full Petition which he signed.

Colonel Dew was produced in Court on the behalf of *Faulmer*, who said, he knew nothing of his birth, he only knew his Father and Mother, that they lived in good fashion and credit, but how the *Faulmer* had been brought up, and where he had inhabited for their ten or twelve years, he knew not; and that this was as much as he could say.

Minibel, an Alcoholic-keeper, was then produced, who said he knew nothing of *Faulstich*, but that he was a very honest man, *Faulstich* having lived in his house a year and three quarters; that he knows nothing to the contrary, but that he was a good Scholar, an honest man, and brought up at the University.

[illegible]

Mr. Carg did testify something to this purpose, in reference to *Briggs's* leading men to Plantations, who said further, he had no more to say against *Briggs*, but that he was a man would drink, and sometimes swear, as well as other men that are accustomed to it; that he knows nothing to the contrary, but that he came to *Briggs* to wait for employment: in the mean time, until he was there, he did another man did, drive to look for relief.

After this, the Court had with much patience heard Captain *Byler*, and the rest of the Witnesses on the behalf of *Faulkner*, (the Counsel for *Faulkner* form'd up the Evidence, and left it to the Jury, with some further observations, viz.

That though the words *in honour and obedience* *Relief* were used in the Petition, yet there were words of *condemnation* of force, as the King should command and prosecute his cause, which was the substance of the thing asserted. *Faulstich* that *Captain Rogers*, and *Minister-Colonel Tyrer*, who have testified of *Faulstich* a *servant*, were *Witnesses* to be preferred before any *testimonies* produced against *Faulstich*; that the endeavour is not only to convict this man, but by conviction and doubling of his credit, to determine that which hath been acted by the Parliament, upon his testimony, and other concurrent testimonies, not only in *petting Votes*, but in *affirming an Act of Parliament* to be *in a State*.

There was nothing objected against the credit of the Witnesses, so long as there was any other face to turn, tho' there were other endeavours used in Parliament to prevent the sale of the Lord Grenville's Estate; so that where all other remedies fail'd, they then make use of this last resort of Perjury, and so hope to undermine the Act of Parliament. Two Reasons might have been enforc'd, yet you see what his part was to do, to defend him that he was not what he was, and it may be, when he was amongst the God-damns, and such kind of men, it was his part to be what small conscience he has (*Absurdities!*) / For a man, or a woman, who professes himself a Christian, and who will drink a health, yet afterwards say he is no Devil, that they acknowledge the charge in part, and would fly it as words, not in substance, and therefore not finally in the latter true.

Thus it was proved that the Earl Petre was to serve the King, as they formerly had served his Father, and they served his Father against the Par-

lament: in their offer must needs be, to be entertained to serve the King against the Parliament.

That it is a *fiduciary*, that this man for so many services performed by him to the Commonwealth, and feelings grounded upon his information, must be blamed here by an artificial distinction, a great while after. And if he shall, after all this, be convicted or Perjury, it will be a discovery to all men to undertake the like employment for the future.

And lastly, the Council for Fardlow disavows, but if there be a mistake in what he hath sworn, yet it appears not to be maliciously or corruptly done, and that therefore the Jury ought to find for Fardlow.

The Reply by the Council, on the behalf of the Commissioners, against Paulson's
was in the terms following:

[illegible][illegible]

They objected, on a *Widney* with the same article as *Dray*. The objection was *Widney* had had his common law for twelve years a-day: that information had no other foundation, than the saying of a *Dutchman*, that said so, or of an *Englishman* in a *Dutch* barge; and what was testified, was what was said, and not what was known of *Dray*. They objected, that *Dray*'s word *honor* is not as another, that *Dray* is a *Widney* and not a *Widney*; and that *Dray* is a *Widney*, *Widney*, *Widney*, when they have produced it. He hath *Dray* is *Dray*, in effect with *Dray*, which you will not forget: be *Dray*, that when the first *Dray* was drawing, it was moved by *Dray*, that the words *Dray* and *Dray* *Dray* should be put in, but it was rejected by them that there is a *Dray* *Dray*: so their own *Widney* speaks with *Dray*.

As for the deposition on record at Hakeadryers hall, which being filed here, it is proof of itself, which no man may aver against, when it is recorded; we have thence it there, traced it here, brought a copy of it endorsed with the Lord Abbot's hand; and it is believed that a man shall be confuted and lose his chair, and not so much as an Oath taken against him! It is apparent there was an Oath, and it is hoped you will believe that which the Parliament hath recorded, and expressly proved by the Gentlemen of Hakeadryers-hall here prefixing, which you will believe before any insinuation that can be made on the other side.

They have been so long at this friendly touching conversation of this man, to uphold his credit, that, Gentlemen of the Jury, you are to consider of the man, who doubtless Mayhew had come out of his mouth, you have heard it. If a man will go so high, as to travel down to *Jerusalem* to the Devil, I hope there is no man for that, his good services must not plead for him to comply with *God-damner*, that will not justify him, he was not first to do any such thing. But we have not relied there; have we not proved him a perjuror of other men, a deceiver, and things that a man should be ashamed to name: the two-and-twenty fables which he took out, and what half wild words he spoke, not fit to be repeated? That will not be palliated by any service whatsoever. And for that which *Mr. Mayhew* hath said, nothing shall be laid against him, but what appears to you; that *Mr. Mayhew* hath gone beyond a *Witch*: for when he hath done his testimony, he stands and maverghs the *Witch*, and in that is not equal to others that do not. For his expiation, that *Endeavour* is one of them by which a man may be saved, and *England* his life at this hour, it is God we fear for by, and not by him. I assure him not for his service, but when we are upon a question of truth, I lay truth and righteousness beyond all service in the world.

They first heard Lord Crove furnished the Petition, and promised to forward it. Gendeme, you must distinguish that which my Lord Crove knew, and that which you knew not; there is not an *affray* from *deception* to *ending*, that *any* man took notice of; but my Lord Crove read the *de-fact* Petition was. In the Petition was the expression of *de-fact* Lord Crove, which was three weeks before the latter, which was finally to drive them might have money for their quarters. The left Petition had former expressions relating to their former service, and these expressions of their readiness for the future; but that Petition my Lord Crove never saw, but was delivered to one Long three weeks before, and Drayd put it down in his deposition, when he was examined by Mr. *Solby*, which agrees with that which was read in Court.

But the particular time when the latter Petition, or Memorial, was delivered, with which the Lord Greaves is charged, was the evening before the King went from *Brede*.

They say that here is no corruption proved, and a man cannot be guilty without corruption; but certainly he that fears a thing that is false, is still of necessity corrupt.

Faulconer answers, that these Officers did subscribe the Petition: Doubt he brings any one to confirm his testimony, or the least colour of evidence to what he hath sworn?

It was further offered by the Council for the Commonwealth, that the Jury would distinguish their verdicts, between the Petition framed and dictated by *Drury*, and sent by *Faulconer*; and that either Petition delivered the night before the King went from *Brede*; the first is produced, and proved to be *Faulconer's* own hand: that *Peterson* was three weeks before, which begs for maintenance, and profits forever, the copy of which was brought forth before any evidence was given by them; for *Drury* upon his examination before the Council of State made the facts known, and which agrees verbatim with that sent in Court. So the dictating of that Petition was by *Drury*, the writing by *Faulconer*, the delivery was to Secretary *Lang*, and that was the thing whereof they did accuse an account; but that was not the Petition to which the testimony of *Faulconer* at all goes. That Petition of which that Oath is spoken, and to which it is applied, is the Petition which was drawn the evening before the King went from *Brede*; and that the *Peterson* talked of in the depositions, that is the Petition upon which we push, and therefore if in that *Peterson* there be more of these words, that which he hath sworn unto is false. For in that Petition we say there was no such words as *barbarous* and *inhuman* *Rabbi*; nor such words of profusion or magnificence, but a mere desire of supper; and they have not offered the best proof to the contrary. And finally, that it was not promoted by the Lord Greaves, nor the Petition was delivered by them to the King, before that time as the Lord Greaves came into the room, so that my Lord Greaves was no promoter of the Petition; and had he been a promoter of it, there was nothing in it, as might give offence, nor, not the least mention of the Parliament, nor any thing that might offend. And whereas they object, that this Oath was not corrupt, the very words of

his apostrophe are very considerable, for he doth remarkably for the words in his deposition, *Thy fight against the Commonwealth of England* by the name of *barbarous* and *inhuman* *Rabbi*: Why would he do such an apostrophe upon it as that was? It could not be a bare mistake; nor the words of this effect, as Mr. *Boley* would have had in, could never have served the turn, for to say he would fight against the *barbarous* and *inhuman* *Rabbi*, or to that effect, there is no such effect in the said Petition nor in the other. Then a second thing is, that this *Faulconer* being, as he deposes, the contriver of the Petition, it could not be a mere oversight and mistake in him; and then when he could not have his desire beyond fear to get money, he said, *He would own here, and do not as if he had*.

The Council urged further: Gentlemen of the Jury, what is become of the original depositions taken in this country; it lies upon them that are for the Oath to make it out. It cannot be pretended that the Parliament would condone a Nobleman's estate, and order it to be sold: would they send it into the Journal-book, and make it a record, should it come and be transcribed from *Holdenburgh-Hall* (the proper Judiciary for that business) to the Council of State, and from the Council of State to the Parliament, and then not to be a true Oath, or false copy? That is not to be denied, that a false Copy should fill a Gentleman's Estate, that a false Copy should be recorded to stand to all Eternity.

After the reply was made; every Judge as Court spoke what they in their judgment thought fit, for the better direction of the Jury; whereupon the Jury withdrew, and the next day brought in their Verdict, That they found the said *Faulconer* guilty of the Perjury mentioned in the Indictment. The Oath following was thereupon made, viz.

By the Court:

*The Defendant sent this Day brought into Court, under the Custody of the Marshal of the Court, upon an Indictment for Perjury, whereunto he had formerly pleaded Not Guilty; and the Jury thereupon being sworn, and sworn, found him Guilty of the Perjury in the Indictment mentioned; and thereupon the said *Faulconer* is committed to the Custody of the said Marshal, where to remain until, &c.*

XXVI. The Trial of Mr. JOHN LILBURN, at the Sessions of the Peace held for the City of London, at Justice-Hall in the Old-Bailey, upon Wednesday, Thursday, Friday and Saturday, the 13th, 14th, 15th, and 16th Days of July, 1653, for returning into England, being banished by Act of Parliament.

[Written (the chief Part) by the said John Lilburn.]

I Was Counsel or Proctor for my Uncle, George Lilburn, Esq. and one Mr. *Jephth* *Primate*, &c. about a Colliery taken from them in the County of Durham, by force and violence, by Sir *Arthur Heslop*; which by his cruelities computes to be worth five thousand pounds Sterling for annum. About which Colliery the said Mr. *Primate* preferred a Petition to the Parliament, upon the 23d of December, 1651, in the delivery and management of which I appeared, as by the declared Law of England I might justifiably do.

Which Petition being by the Parliament referred to a Committee to examine it, who spent twelve or thirteen large hearings thereupon; and upon the 19th of January, 1652, now file, the Chairman thereof, Mr. *Abb*, made his report to the House: but what it was, we never were permitted to see nor to hear read. And as some Members of Parliament have since told me, he made his report quite contrary to, or short of the evidence which was given in: whereupon the Parliament, the said 19th day of January, voted the said Mr. *Primate's* Petition to be false, malicious, and scandalous; and that Sir *Arthur Heslop* is not guilty either of Oppression or Tyranny, in the Charge and Execution of this business; and that all the Copies of the said Petition (which relating only to *Primate*, as he here intimated) should be burnt by the hands of the Common-Hangman. And voted Mr. *Primate* to pay seven thousand pounds, or to be imprisoned till he pay it; which is all his punishment. And then the same day they passed certain Votes against me, which as they themselves, by special order of the 17th of January, have printed them, verbatim thus follow:

Resolved,

That the Fine of three thousand pounds be imposed upon Lieutenant Colonel *John Lilburn*, to be paid to the use of the Commonwealth.

That he be fined two thousand pounds more, to be paid to Sir *Arthur Heslop*, for his damages; and two thousand pounds more, to be paid to Sir *Robert* *Bagley*, *Edward* *Widdow*, *William* *Abbott*, and *Arthur* *Speck*, Esqrs. four of the Commissioners for compensating; that is to say, to each of them five hundred pounds for their damages.

Vot. VII.

Resolved, &c.

That Lieut. Col. *John Lilburn* be banished out of England, Scotland, and Ireland, and the Islands and Territories thereto belonging; and not to return into any of them, upon pain of being proceeded against as a Felon, and in case of such return, shall suffer death accordingly.

Resolved, &c.

That Lieut. Col. *John Lilburn* do depart out of England, Scotland, and Ireland, and the Islands and Territories thereof, within thirty days now next coming; and in case the said *John Lilburn* shall, after the said thirty days, be found within England, Scotland, or Ireland, or the Islands and Territories thereto belonging, or any of them, the said Lieut. Col. *John Lilburn* shall be proceeded against as a Felon, and shall suffer the pains of death accordingly.

Resolved, &c.

That the Sergeant at Arms attending the Parliament, do apprehend the said Lieut. Col. *John Lilburn*, and bring him to the bar of the House, upon Tuesday morning next, to receive the judgment of Parliament aforesaid; and that Mr. *Speaker* do direct a warrant to the Sergeant at Arms accordingly.

But being myself at the Parliament-door when these Votes pass, and understanding what they had done, although they fine to my reimbursement a good while after candle-light, I had, and when the Sergeant at Arms came forth with his mace, and the Speaker, I spoke to him in these words, or to this effect: Mr. *Speaker*, I understand the House hath this day passed some Votes against me, in which regard I stand on purpose, to see if you have any thing to say to me. Upon which he replied, No, Sir, I have no warrant yet to meddle with you, and therefore

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therefore

therefore you may go whether you please. Well, Sir, if you have none to-night, I will permit you, to wait upon you to-morrow morning, to see whether then you will have any or no. And being as good as my word, the next day being Friday, January the 16th, he came into the custody of his Deputy, Mr. Payne, where I remained till *Tuesday morning* next (as it was ordered at the last Vote) which was *Tuesday* the 18th; and coming to the Parliament-door, I was ushered into the Bar by the Sergeant at Arms, having his hand upon his shoulder, where Mr. Speaker, as the member of the House, expelled himself in their words, or to this effect:

Lieutenant-Colonel Lilburn, you are commanded by this House to kneel; unto which I assented in their words, or to this effect; Sir, with all Submission to this honorable House, I desire still a little liberty to speak. No, Sir, *Lieutenant*, you are permitted to speak at all, but I am commanded to kneel. Well then, Sir, said I, with all submission, I beseech your sentence, that you have already put upon me, but I cannot kneel.

Lieutenant-Colonel Lilburn, said he, the House commands you to kneel. Well then, Sir, said I, as be forth with you, I neither can kneel, nor will I kneel. Withdraw then, said he, which I did accordingly, making them two or three together as my going out, the which also I did as I came in. Whereupon, as I was informed, being that I would not kneel at their Bar to receive my sentence, they voted to draw up an Act of Parliament to punish me; and passed another Vote by way of punishment, to take off ten days of the time they had formerly given me to spend the house in. *Altho* upon the Friday at night before, I with my Keeper went to the Sergeant's House, and spoke to him to this purpose. Sir, *Sergeant*, I understand the Parliament this to-morrow, to censure the Commissioners for regulating the Law, and I know it is their usual manner to command all men that come to their Bar (that they look upon as delinquents or offenders) to receive their sentence at their Bar kneeling.

And truly, Sir, I have no desire at all to offend them, or to see them more than they are, for I believe they are wiser enough already at me. And therefore I beseech you, oblige me for as far as you, as to tell the *Speaker* and some other Members, whom you please, from me, That when upon *Tuesday* I shall come to their Bar, to receive their sentence, I shall not kneel, although they should order you with your power to cause him to kneel; my brain out said, Sir, if you please to give me leave, I will oblige you my motion, and to this I know what my knowledge at your Bar to receive sentence, the Parliament looks upon it as an action or posture of kneeling, as a demonstration of a man's own acknowledgment in his own conscience that he is guilty, and thereby does deserve such a punishment as by that sentence is laid upon him; the which if I should do, I were in my own understanding the worst creature in the world, because my conscience and soul tells me, that I have done no evil, nor broken none of the Parliament's Laws, but followed (as by the Laws of England I may justifiably do) an honestly just and righteous business, in a just and honest way, without using any base or wicked sordidly means to effect my design in it. And whatever Mr. *Hill* hath reported to the House, I am sure of it, I have fully proved every clause and circumstance contained in our Petition, have only that clause in Mr. *Arthur Hylborne's* private correspondence with some of the Commissioners of *Holborn* denied. But if we had not proved the Petition, there is no Law extant in England to enable the Parliament in the least to put such a sentence upon me; and therefore for me in words, actions, or gestures, to do the least circumstance, to make the Parliament believe that I am in mine own conscience was convinced that they had passed a just sentence upon me; I had rather, Mr. *Sergeant*, be cut in ten thousand pieces, than be such a rogue and traitor to mine own liberties and the nation's; and therefore I beg of you beforehand to tell them as much from me, that if they may avoid, if they please, their forcing me on *Tuesday* next to offend them. And he afterwards assured me, that the next day, being *Tuesday*, he told twenty or thirty of the Members of Parliament of it, so that they put the affront upon themselves, and not I. But upon the said *Tuesday*, after that I was withdrawn out of the House, and in a liberty to be gone as soon as I pleased, then being great numbers of Citizens, my very good friends, at the door (who were persons that had always faithfully adhered to the Parliament's cause), were persons that had always faithfully adhered to the Parliament's cause, called for a Petition for the revoking of my banishment; the Petition being called for, was read and debated, but laid aside, without giving any answer to the Petitioners. The Copy of which Petition, as since it is printed in England, thus followeth:

To the supreme Authority, the Parliament of the Commonwealth of England,

The humble Petition of many well-afflicted People, inhabiting the City of London, Westminster, Southwark, and parts adjacent, in behalf of the just Liberties of the free People of England, highly concerned in the journey against Lieutenant-Colonel John Lilburn.

HUMBLY SHEWETH,

THAT if the manifold services, and extreme sufferings of Lieutenant-Col. John Lilburn, in opposition to tyranny and oppression, and how instrumental he hath been in the removal of dozens of oppressors, his wonderful deliverance, and clear acquittal by legal trials, from all former accusations, without the least stain to his reputation; if all these could be forgotten, and that he stood in our thoughts, but as a man of well-affected persons (and such at the least we must allow him, his rights as a citizen as Parliament), yet in your late proceedings against him, and heavy sentence upon him, we approached our native rights as much concerned, that we never conceived a greater cause of just application to you for redress, than upon this sad occasion.

For certainly it cannot be denied, but that he is really an offender, he is such by the breach of some Law, made and published before the fact, and caught by four pieces of Law, and verdict of twelve men, to be thereof convicted, and found guilty of such crime; unto which the Law also hath prescribed such a punishment agreeable to that fundamental Liberty,

which Englishmen that no Freeman of England should be deprived of life, limb, liberty, or estate, but by Justice; a freedom where Parliament in all ages extended to preserve from violence, as the burning and chief inheritance of the people, as may appear most remark in the Petition of Rights, which you have thither, that most excellent Law.

And therefore we trust upon record thence (though the Parliament of England) you will be so far from being angry, as even have never set, nor our right of this our native right, and way of trials by Justice (for what is due unto any one, may be done unto everyone). But you will preserve them entire to us, and to posterity, from those persons interested in that would innovate upon them. And if the argument of the unhappy difference between Mr. *Arthur Hylborne* and Mr. *Lilburn* be any way divided (being as you are informed), it will appear, that Mr. *Lilburn's* is upon a more due to Mr. *Lilburn*, without any process, was the best occasion thereof.

And it is believed, that Mr. *Prosser's* cause (wherein Mr. *Arthur Hylborne* and Mr. *Lilburn* have been engaged) had at any time either at law or last been admitted to a trial at Law, and had passed away by verdict of twelve sworn men, all the troubles and inconveniences arising thereupon had been prevented: the way of due resolution by major votes of Commissioners, being neither to contain one to satisfaction in any case, as by way of Justice, the benefit of challenges and exceptions, and unanimous consent, being all essential privileges in the trial; with new Commissioners are not so to be considered, but are at liberty to be put out of countenance. Besides Justice, being brought in, and the other last new and temporary men do not, nor [as we humbly conceive] ever will acquiesce in the one as in the other; from whence it is not altogether so much to be wondered at, if upon difficulties, there have been such frequent granting of men's case, and dealings of Commissioners, as it hath been; and such harsh and insolent heats and expedients between justly unsatisfied, such sudden and importunate appeals to your authority, being made of all sides out of the true English mind, and kind, into nothing but trouble and perplexity, breeding hatred and enmities between worthy families, affronts and disgust between persons of the same publick affection and interest, and to the rejecting of true but publick advice. All which, and many more inconveniences, can only be avoided by referring all such cases to the usual trials and usual determinations of Law.

And whereas you have certain Mr. *Lilburn* break through the said grounds first, and perpetual banishment, and to do as he pleaseth in this, we are exceedingly afflicted in our spirits thereby, not only because he hath not in the usual way of trial by Jury, which yet again we much with us; nor for that we believe he hath followed Mr. *Prosser's* cause, out of strong persuasion of the justice thereof (the cause in itself, as we have been informed, being very intricate and hard to be understood, and to do not wilfully or intentionally carry it out against his conscience, face of the Commissioners willing to God it had therefore never come before them), nor for that we believe him innocent of any wilful breach of Parliament privilege, in delinquency printed Petitions, before the original was presented unto you (that being first by a private published, as he himself) the right all things add to our grief, yet the more of our affliction which from the difficulty, not of the best way in being therein contrary to that other our fundamental native right, which upon the contrary should have regard to the qualities of the person, a punishment being his wages, and a merchant his merchandise. Whereas this, if relating to his estate, we believe, is so far from preserving him in his quality, as that it leaves himself, his wife, and children, without subsistence; if in relation to his person, his affection to Parliament, and zeal to publick freedom, renders all foreign Nations to unsafe to him, as that in effect he is banished into a wilderness, and exposed naked to the fury of bears and lions.

The premises fully weighed, and for that (as you are informed) the parties accused and concerned have had no means for what report hath been made by the honorable Committee, nor have had the liberty of expressing themselves, in like cases granted, and in that many well-afflicted people that heard the debates, and evidences on both sides, are unsatisfied, both in point of position, and title to the colliery in question; that the house of Parliament may stand immaculate, our native fundamental rights inviolable, and all these gentlemen concerned in this cause left without any the least grudging, or just complaint;

We have desired ourselves bound in conscience in most humble manner to

- I. That you will be pleased to read your fore-mentioned grievous sentence upon Lieutenant-Col. John Lilburn, and the rest concerned therein.
- II. To give free Liberty to Mr. *Prosser* to prosecute his cause, both for title and possession at the Common Law, and therein to make use of what Counsel he shall think fit.
- III. That Sir *Arthur Hylborne* be released to take his course at Law, for whatsoever injuries committed to be done with him by Lieutenant-Colonel John Lilburn, or any others, as was granted in Mr. *Hylborne's* case with the said Sir *Arthur*, and that Mr. *Lilburn* may any other way have the same liberty against Sir *Arthur*, if they conceive any cause.

After which, the said friends of mine drew up another, as they hoped, much more effectual than that last; and upon the *Tuesday* after, being *Tuesday* the 16th and 17th, next up with it to the Parliament-house, but could not a third day I told. Upon which I thought appropriate with that is handled at the same, as some believe in England in London, and the same evening, was a true Speaker of the Parliament, and told him, that on the morning, being *Tuesday*, I intended, by God's assistance, to take my journey to *St. Sepulchre's*, and therefore intended him to give me his Pass, but he told me, he did not see fit his journey gave me a Pass. Unto which I replied; Sir, that is very strange, that your House will command me, upon a day of death, to leave England by such a day, (which I am willing to do) and yet you will not give me by your Pass to begone. For unto which, it is very probable, when I come at the said day, your Officers of the Custom-house will stop me; and yet, because I am not gone out of England before this day, I must be hanged. What is this else, but to lay a curse for my life? For you

* This Petition showing the effects and necessities Lilburn was in among the People, and the sentiments these times had of his Cause, and the value they set on Truth by Justice, as the birthright of Englishmen, is the reason 'tis here inserted.

Mr. Recorder replied, *Mr. Lilburne*, we know of no such thing, the Records of the Acts of Parliament are at *Windsor*, in the Clerk of the Parliament's hands, and there you may have them.

Mr. Lilburne, Good Mr. Recorder, interrupt me not, but let me go on; I say, my Counsel tells me, I ought, as my right by Law, to have demanded *Oyer* of the said Act, Judgment and Crimes, and after I had been there under the Broad Seal of England, and heard them read in open Court, I ought, as my right by Law, to have demanded copies of them all three, and they ought not to have been denied me; that I might have been fully enabled all at once to have returned Exceptions as large as the Indictment, the Act upon which it is grounded, the Judgment upon which the Indictment, the Crimes, and the Crimes, which is the original of all. And if no legal Act can be produced, they tell me the Indictment, and all proceedings upon it, are void and null. And they also say, if no legal Judgment can be produced, they tell me the Act for the execution of it is null, and falls to the ground. And they also say, if no Crimes in Law can be produced upon which the Judgment is legally founded, all is at an end, because what is not good law found in its original in Law, can never be made by way of time; and what is not found and substantial in its foundations, can never be made to in its fabric or buildings. But yet, my Lord, they say it is not too late for me to say to still upon my right by Law: I confess, my Lord, there time would not permit other than to fly in the Tower, and draw me up the formal draught of such a claim, much less would it permit them to fly in Town till it was executed in parliament, that they might let these hands loose. But, my Lord, according to those legal instructions that I have lately received from my Counsel, I have got such a Paper formally in Law drawn up, and it is here attested in Parchment, and signed with my own hand. And, my Lord, I here tender it unto the Court, with two Billings as the Clerk's fee, to enter it upon Record at his peril. The Copy of which Parchment shall follow:

At the Sessions of Peace held for the City of London, at Justice-Hall in the Old-Bailly, now sitting this present 10th day of July, 1653.

The Keepers of the Liberties of England, by Authority of Parliament, against John Lilburne, now Prisoner at the Bar.

THE said *John Lilburne*, Gent. the now Prisoner at the Bar, supposed to be indicted by that name, brought to the Bar, and now appearing in person, having heard the said Indictment read in these words, to wit: *Lilburne* J. The Keepers of the Liberties of England, by authority of Parliament upon their oaths do protest, that in and by a Statute made in the Parliament of this Commonwealth of England, holden at *Windsor* in the County of *Windsor*, the 30th day of January, in the year of our Lord 1651, entitled, *An Act for the Execution of a Judgment given in Parliament against Lieutenant-Colonel John Lilburne*, and it was enacted by the said Parliament, and by the authority of the same, That the said *John Lilburne* should (within twenty days, to be accounted from the 15th day of January, 1651), depart out of England, Scotland, Ireland, and the Islands, Territories, and Dominions thereof. And in case the said *John Lilburne*, at any time after the expiration of the said twenty days, to be accounted as aforesaid, should be found, or should be remaining within England, Scotland, Ireland, or within any of the Islands, Territories, or Dominions thereof, the said *John Lilburne* should be, and was thereby adjudged a Felon, and should be executed as a Felon, without benefit of Clergy.

And it was also enacted by the authority aforesaid, That all and every person and persons, who should, after the expiration of the said twenty days, knowingly receive, harbour, or conceal the said *John Lilburne*, he being in England, Scotland, Ireland, or within any of the Islands, Territories, or Dominions thereof, should be thereby adjudged accessory of Felony after the fact. And all Judges, Justices, Mayors, Bailiffs, Sheriffs, and all other Officers, as well military as civil, in their respective places, are thereby required to be aiding and assisting in apprehending the said *John Lilburne*, and in putting the said Act in due execution, as in and by the said Act of Parliament appears. And that the said *John Lilburne*, late of London, Gentleman, the Statute aforesaid due weighing, nor the punishments therein contained any way fearing, after the expiration of the said twenty days, to be accounted from the said 15th day of January, 1651, as aforesaid, so wit, the 15th day of June, in the year of our Lord 1653, was found, and was feloniously remaining within England aforesaid; that is to say, at London, to wit, in the Parish of *St. Giles without Cripplegate*, the Ward of *Cripplegate*, London aforesaid, against the form of the Statute aforesaid, and against the public Peace, &c.

SADLER.

Which being heard and read, be faith, that it appears by the said Indictment, that he stands indicted by the name of *John Lilburne* of London, Gentleman, by virtue of an Act of Parliament made the 30th day of January, 1651, grounded upon a supposed Judgment given in Parliament against him the said *John*, or one Lieutenant-Colonel *John Lilburne*, for several crimes and misdemeanors therein contained. And therefore he the now Prisoner at the Bar, doth humbly pray *Oyer*, or hearing of the said Act, Judgment, and supposed Crimes mentioned in the said Act, according to Law, and under the Great Seal of England, to enable him to plead thereto. And he will ever pray for your Honours and Bench.

JOHN LILBURNE.

Which being handed into the Court, Mr. Recorder looked upon it, and said, *Mr. Lilburne*, this is not signed under your Counsel's hand; the thing that we expect, your Exceptions sign'd by your Counsel: what call you this Parchment?

Mr. Lilburne. I know not, Sir, what more properly to call it, than my legal demand of *Oyer*, or hearing in open Court the Act of Parliament upon which the Indictment is grounded, and the Judgment upon which the Act is grounded, and the Crimes which is the foundation of all. And, Sir, let me tell you, my Counsel commands me to insist, and dwell upon the demand of *Oyer* as my right, and as the chiefest shield and buckler I have to defend my life. For they say, if no legal crimes can be produced upon which the Judgment was grounded, all is at an end, and there can be

no more proceedings against me. And I am sure, there can be no felonious crimes in Law produced against me, for I never committed any in all my days, never was any legally so much as pretended to be laid upon my charge: therefore, my Lord, as my Birthright, and Inheritance, I demand the benefit of the Law, which is *Oyer*, or hearing of the Act, Judgment, and Crimes. But the Recorder, the Lord Mayor, and several others endeavoured to interrupt him.

Whereupon he cried out again and again, My Lord, Rob me not of my Birthright, the benefit of the Law, but let me have *Oyer*; which again and again I demand as my right, and inheritance. But four or five in the Court again interrupting him, was the Lord-Mayor, Mr. Recorder, the Attorney-General *Produce*, and mauling Mr. *Hall*, My Lord, Rob me not of my Birthright, the benefit of the Law, nor interrupt me not, but give me free liberty to speak for my life. And, my Lord, if you will be so audacious and unjust in the face of this great auditory of People, to deny me and rob me of all the relief of Justice and Right, and will forcibly stop my mouth, and not suffer me freely to speak for my life according to Law, I will cry out and appeal to the People and do cry out, and appeal to all the People that hear me this day, how that my Lord-Mayor, and the Court, by violence rob me of my Birthright by Law, and will not suffer me to speak for my life. At which the Court began with a great heat and rage. Mr. Recorder sent the Prisoner his parchment, and money out of the Court again; but he would have none of it, he commanded the Clerk again to restore it, and enter it upon Record at his Peril.

Mr. Attorney-General *Produce* being very busy to hold the Prisoner to questions to satisfy himself, as whether he was that *John Lilburne* meant, and intended in the Indictment and Act, or no, and to drive him off from passing his full demand of *Oyer*, which the Prisoner perceiving falls upon the said *Mr. Produce* to this effect:

My Lord,

I had thought the other day I had full enough to have silenced that Gentleman at this place; but, my Lord, being he will seek to deny, and speaking, I beseech you, my Lord, let me desire to be listened, and to know in what capacity that Gentleman is here at this place; for I am sure, my Lord, he is no Judge of the Law, nor no Counsel, and therefore cannot, as a Justice of Peace, sit upon the Bench as one of my Judges. And, my Lord, if he be my professor, as he is Attorney-General, he can be no more; and if so, my Lord, it is an amazement to me, that your Lordship and the Court will so disavow yourselves, as to suffer a bare Professor to sit amongst you upon the Bench, as one of the chiefest of you, with his hat on his head. My Lord, do what becomes you, and thrust him down to the Bar, and there let him (as I do) stand with his hat in his hands, and know his office and duty, and grace there. But, my Lord, whether he be as my Judge, or my Professor, he is as competent a man to be in either place, because, my Lord, he is legally an impeached Traitor, by one *Esquire Elliot*, now Prisoner in *Newgate*, who, my Lord, avows to me, that he hath great force, before the Lord Chief-Justice *Rail*, and the rest of the Judges of the Upper-Bench, legally and formally in Law exhibited a charge of High-Treason against him, which he avows the Court hath accepted of, and recorded as formal in Law, and required of him to enter into great bonds to prosecute it, and make it good: and, my Lord, here is a duplicate of the said charge of High-Treason, which the *Esquire's* own hand gave unto me as true copy. And besides, my Lord, he further vows to me, that the Attorney-General, by reason of his late power and grounds in Parliament, the said Attorney-General stands out in contempt, and from the law, and neither will, nor does answer his said charge of High-Treason; in which regard of his contempt of the Law of England, through his own acknowledged guilt thereby, he hath himself brought him at Law to be outlawed as a Traitor: which he avows, as soon as it is perished, whenever he can meet the said Attorney-General, and apprehend him, he will without any more ado execute him as a Traitor.

In all which regards, my Lord, I do avow Mr. Attorney-General, in Law, to be altogether incompetent, either for my Judge, or Professor, or any man's clerk whatsoever; or so much as to be at liberty, to converse with the honest and antient People of England till he hath yielded conformity to the Law, and answered to his said charge of High-Treason. Unto which Mr. Recorder seemed to make some answer in the Attorney-General's behalf (which the peasant before sat well hearing, cannot let down).

Mr. Recorder fell upon the Prisoner, and told him how he had trifled away the time of that Court, and had had more favour than any Prisoner ever had.

Mr. Lilburne endeavouring to reply, the Court rose and over again and again interrupted him; but he would go on, and crying out, said to this effect: Mr. Recorder, I wonder you are not ashamed to tax me with trifling away time, when it is only yourself and the Court that are truly guilty of it, in making me spend my lungs and my spirits for two or three days together, to plead and contend with you, before you would grant me that which is so absolutely my right by Law, as a Copy of my Indictment is: so that, Sir, with your favour, it is you that trifle away time, and not I. And whereas you say, I have had more favour than ever Prisoner had, I wonder, Mr. Recorder, you are not ashamed to say: for what favour at all have I had, when I have not yet enjoyed so much as the Law allows me? Sir, let me tell you, the learned men of the Law, the Lord Chief-Justice *Rail*, and the Judges of the King's or Upper-Bench, allowed the Lord *Allegance*, that arch bloody *Irish* Rebel and Traitor, who was indicted before them for his life, a thousand times more favour than you do me. For although his crimes were notoriously wicked, even in the eye of the common or known Law of England, and obvious and pernicious enough to the sight of every eye; yet when he made, as my information hath often told me, but one single exception in a parchment, or formally about his Personage, against his Indictment, the Judges allowed him to plead *Counsel* in the Law to plead it, and time enough for him and them to study and frame their Arguments in Law upon it.

Mr. Recorder. And, *Mr. Lilburne*, you tell us much of the advice your Counsel has given you about the *Oyer*, can you shew us their advice under their hands?—Lilburne. Yes, Sir, that I can.

Recorder

Recorder. Well, produce it.
Lilburn. Sir, do ye mean to the point of the Oyer?
Recorder. Yes.
Lilburn. Well then, Sir, it may be as to the pendillo of a word I have misheard you; but I am sure I have it under one of their hands, and two Witnesses at the Bar to depose it upon Oath, that the other expressly advised it, as the main official thing to my life and well-being.
Recorder. Mr. Lilburn, for all your pretence of integrity, the auditors may take notice, that you aver a falsehood in the open Court that you are not able to make good.

Mr. Lilburn. In the midst of those many and eager interruptions that I meet with from three or four of you at a time, it is easy for a stranger to mishear; so mine, to let a slip fall in the pendillo of a word, be Sir, to the utmost of my disparagement, and to advantage, make the worst of it you can; and for what it can amount unto. For in the first place, I do avow with my life, that I saw Mr. Nickery, with his own hand, write these very words upon the back of the Copy of the Indictment, which is here in my hands, and are as followeth:

Mr. Lilburn ought to see the Counters, and the Return of the Counters; and if the Act be certified without the Judgment, which is recited therein, as is recited for the Counters.

Mr. Stirk was pleased to spend some time upon cavilling at Mr. Lilburn's mispronouncing the word *Counters*, although he had formerly told the Recorder, he neither understood Latin, nor French, nor could will read either of them. And then he told them, that most Lawyers hands were very ill of to read by persons that were not well acquainted with them; but Sir, faith he, here is Mr. Nickery's own hand, and I do avow it upon my life for a truth, that my eyes saw it with mine hand and pen write it.

Finally, if my memory mislike not, I have Mr. Alford's hand to the same thing also. In those rudeness that Mr. Alford under his hand sent me, by my father and brother that day, both of whom are here present in Court, upon their Oaths to justify, that if it be not plainly expressed under his hand, that by word of mouth, it was the principal instruction he gave unto them, to give unto me to fulfill upon, as my right, to demand the Oyer, &c. But Sir, as for the paper itself, there it is, read it; which paper followeth in these words:

In fact, that John Lilburn the 15th of June 1653, was seized, and was feloniously remaining in England. This is sufficient, for it is not said that he was feloniously seized; felon the brief found in England is not said to be the felonious fact. Secondly, And was feloniously remaining; it should be said, was seized and there feloniously remaining. So there is no Felony charged by the brief found. There is no time charged of that which is said as a Felony. John Maynard, the 15th of July 1653.

And by way of postscript in the same hand, which are these words, That the Prisoner at the Bar is to be sure, that he may have Counsel to plead his Exceptions. And in the same paper, in somewhat a different hand, there are these very words, I pray the Oyer of the Act of Parliament the Indictment is grounded upon; pray read it upon Record, except of no Copy but the sight of the Record under the Great Seal. Which paper the Recorder reading, and seriously viewing, said, Mr. Lilburn, this paper will not reach your purpose; for those lines that seem to be Mr. Alford's, are not home to the thing in hand, and these lines that are for your purpose are in a quite different hand.

Mr. Lilburn. Well, Mr. Recorder, it matters not much, for I am sure the paper is not in the back of my writing; for I had it as it is from my brother, that I sent to Mr. Alford with my father about my business, and I am sure it either all is Mr. Alford's hand, or my brother's, who went down from the words of Mr. Alford's own mouth, these instructions that he gave unto him and my father for me to dwell and fulfill upon, and to venture and call my life upon. There they both are, I can administer unto them both their Oaths, that they may freely speak before the Court, what Mr. Alford laid unto them in this particular part about the Oyer, &c.

Whereupon all Mr. Richard Lilburn, the Prisoner's father, with his five or six in-law Mr. Thomas Gore, began to speak, and to justify what the Prisoner had alleged; that the Court interrupted them, and commanded them to be silent, and would not let them go on. But Mr. Recorder, taking liberty to speak as long and as often as he pleased, took the liberty several times to Cumulate, and reader address the Prisoner at the Bar, for availing a falsehood in the open Court; and so sometimes did the Lord Mayor also, although his Honor was pleased to show Mr. Lilburn a printed Petition a day or two before, and did solemnly in the face of all the Court avow, that the Woman, pointing to Mrs. Diermer, then a Prisoner at the Bar, had avowed that she had the said printed Petition, and address of the long kind, from Mr. Lilburn. Upon which the said Diermer openly cried out, That's false, my Lord, I never said any such thing in my life.

Upon this it was a curious barley-bush, that happened betwixt the Lord Mayor, Mr. Recorder, the Attorney-General, and summing Mr. Hall the Attorney of the Duchy, and Mr. Lilburn Prisoner at the Bar; Mr. Lilburn's father, and his brother-in-law Mr. Gore, and one Mr. Thomas Gore, but especially Mr. Thomas Priour, pressed to speak; but could not be permitted, but were again and again interrupted and silenced.

But Mr. Priour persisted hard on, and told the Lord Mayor to this purpose. That it was the known Law of England, that any by slander a husband might speak for the Prisoner's benefit at the Bar, especially when they apprehended the Prisoner was like to be wronged, and desired his vindication, the benefit of the Law; and this privilege, my Lord, by request of the Court, you have granted me, and other of Mr. Lilburn's friends, to come right to the Bar to speak in his behalf, when we find things wronged him against error and right; and therefore, my Lord, the thing that Mr. Lilburn demands about his Oyer, or hearing read the Act of Parliament, upon which the Indictment is grounded, and the Judgment upon which the Act is grounded, and the crimes that ought to be the original of all, is so essentially his right, that it is an encroachment to me to be denied; and also it is a wonder to me, that any man that pretends to know the very best Rudiments, or the very first footsteps of the Law, as Mr. Recorder doth, should endeavour to deny such a thing to the people, grounded in every ordinary Court of Justice, in the scale of every ordinary Bench and Hall that a suit is commenced upon.

The Court with violence and fury interrupting him, and silencing him; and Mr. Recorder commanding the Prisoner at the Bar to his peril to deliver in his Exceptions before it was too late to receive them, and Mr. Hall mumbly proceeding again and again to gain favours of commendation upon him; and the Attorney-General upon the Bench, closely pressing to lead him to the point, and set the Prisoner have any elbow-room to go from it; and Mr. Law the Clerk of the Court, (like a most despicable Tyrant) pressing to gage the Prisoner at the Bar, that he should speak no more, and immediately put sentence of condemnation upon him, and take him away: the Prisoner clearly perceiving the violence and fury of the Court, with an exclamation, earnest, ardent and fierce, and shrill, loud voice, cried out,

My Lord, will you murder me without right of Law, by robbing me of my birthright, and denying out of Oyer, which is as much my right by Law, as the blood that runs in my veins? My Lord, are you afraid, and shamed to produce that Act of Parliament upon which you pretend to ground your Indictment, upon which you would take away my life? My Lord, if you thus proceed, you will give me and the people cause to believe, that there never was such an Act of Parliament as you pretend, nor such a Judgment as it pretends to be the executor of; nor no such crime ever committed or acted, as any Judgment of Felony can be imagined to be grounded upon; but that rather all your proceedings against me, from first to last, is a malicious pack'd conspiracy against me to murder me, and without ground or cause to take away my life. For whose life have I feloniously taken away, or endangered? And if none of all these things in the Hall can be laid unto my charge, or never were, where is the act of Felony that I have committed, upon which I am endeavouring to be hanged?

But the Officers crying out, *Hear the Court*; and the said mumbly Mr. Hall flung his pitiful ill-timed song of praising for Judgment against the Prisoner; and so many of the Court fell upon him at once, to deliver in his Exceptions before it was too late, as made the proceedings of the Court full of confusion.

Mr. Lilburn. My Lord, I may not part with my Exception till my demand of Oyer be read. My Lord, mayest and honest Council, both of them, in both of whom I have found a great deal of faithfulness and truth to me, have commanded me to dwell upon my demand of Oyer, as upon my life, and as upon a thing that is my undoubted right by Law, that cannot, nor ought not to be denied me. My Lord, the security of my life lies in it; and it is to be assured me, I am for ever out of all danger of death, because it is possible you cannot produce one line of a legal Act of Parliament, nor one syllable of a legal Judgment, nor, I am sure of it, so much as any shadow of pretence of a legal crime of Felony to be the foundation of all; and of so, they tell me absolutely all your proceedings against me are at an end, and I am safe and secure. Therefore, my Lord, I again and again press, to leave the Court without excuse, and do demand before all their people Oyer, or hearing of the Act, Judgment and Crimes, upon which your Indictment is grounded, as a thing that is as much my right by Law, as the blood that runs in my veins; therefore, my Lord, deny it me not.

Mr. Lilburn, with the Recorder, it is late, and we cannot spend much more time about your business; and the Court had already told you, they neither will nor can receive in your petition for Oyer, without your Counsel's aid.

Mr. Lilburn. Alas, Sir, I have dealt faithfully and truly with you, and told you, that it is drawn up by their instructions; but really and truly they were both gone out of London, before pen could be put to paper to draw the rough draught of it; and therefore it was impossible to get their hands to the legged copy. Wherefore I beseech the Court to give me time but till Monday morning, and I will send after them for their hands; and engage not only to get their hands to the parchment, but to bring one or both of them to this Bar, to justify their instructions to me, and that their instructions are Law. Therefore, my Lord, be pleased to grant me but till Monday morning, and I will have them here, although I have not a hundred Conches with six horses a-piece to fetch them hence.

Lord Mayor. No, the Court breaks up to-night, and therefore we cannot give you till Monday.

Recorder. Mr. Lilburn, being you insist so strongly upon it for your Oyer, I will tell you what we will do with you: put in your Exceptions to-night, which you have under your Counsel's hands, and the Court will allow you that in such your Counsel at our next meeting about your business, will avow that your petition for the demand of Oyer is Law, and will grant it you; and your putting in your Exceptions now, shall be as prejudicial to you as any kind.

Mr. Lilburn understanding to speak, to close with him, several of his honest and true friends that stood by him, cried out, there was a leave laid out for him, and bid him rather die than go as inch from his Council's hands, just as he had taken instructions. At which the Court grew very angry, and judgment again began to be pressed against the Prisoner at the Bar; and the Court required the Exceptions, without any more ado, to be delivered in.

Mr. Lilburn. Well then, my Lord, seeing I have done my utmost to obtain my right by Law, which is to have the Oyer of the Act, Judgment, and Crimes, upon which the Indictment is grounded, and it will not be granted me, but the Court hath over-ruled me; therefore, my Lord, to let all the world know that I am no better, nor procreatorator of time, nor have any thing of gain, fear, or dread within me, although it be never so much to my wrong, and tend never so much to my apparent dishonour or ruin, I will close with Mr. Recorder, and immediately deliver in the Exceptions that I have as yet but already signed by my Council, as a part of my Exceptions, provided he will duly repeat over the promise of the Court, and enter it upon record in the Court's Books, and order the Clerk immediately to draw up an order upon it, as large as it is in itself, and give it me legally signed before I stir from the Bar.

Yes, faith Mr. Recorder Steele, Mr. Lilburn, the doing of what you require, would take up too much time, and therefore the Court doth not do it: but they will make read what I have said unto you.

Whereupon, Mr. Lilburn repeated what Mr. Recorder (in the name of the Court) had promised, and said, Sir, it is not this that the Court will stand to? Yes, faith the Recorder. Then, Sir, I believe you, in the audience of all these people, (that they may hear witness) against it over again yourself.

are several persons known and distinguished by the name of John Lilburne, of London, Gentleman. And for that the said John Lilburne, Prisoner at the Bar, does not acknowledge that he now is, or at the making of the said Act, or calling the said supposed Judgment, was a Lieutenant-Colonel; or that he could be entitled and distinguished by that title; let, the said John Lilburne, Prisoner at the Bar, cannot join any certain affidavit with the Keepers of the Liberties of England upon the said Indictment. For the said Indictment not asserting the said John Lilburne, now Prisoner at the Bar, to be the same Person, and not other, or diversify from that John Lilburne, intended and meant in the said Act, and distinguished from all others of the same name, by the title of a Lieutenant-Colonel; if the Prisoner at the Bar should plead the general issue of *Not guilty*, he should entitle himself to be the same John Lilburne, intended by the said Act, else he is not concerned to plead to the said Indictment. And by consequence, if the Prisoner at the Bar should plead *Not guilty* to the said Indictment, the only issue to be tried in point of fact between the Keepers of the Liberties of England and the Prisoner would be, whether John Lilburne, Prisoner at the Bar, was found in England, upon the 15th day of June, 1653; and by consequence, the Prisoner at the Bar, though he be not the person intended by the said Act, might be entailed and condemned as a Felon, only because his name is John Lilburne; and if any other John Lilburne should in like manner plead to the said Indictment, he should suffer, because he is called John Lilburne.

For all which errors and insufficiencies in the Law, in the said Indictment, Act, and supposed Judgment, appearing, the said John Lilburne, Prisoner at the Bar, humbly prays, that the said Indictment may be quashed, and in case the honorable Court be not fully satisfied in the said errors and insufficiencies of the said Indictment, he prays that Counsel learned in the Law may be assigned him, and a competent time given for him to advise with them, and for them to prepare their arguments upon all the said matters of Law. And that the case being of very great difficulty, and much concernment to the liberty of all the people of England, and being a case without any precedent; and the facting or spurning of innocent blood, depending upon a resolution thereof; he humbly prays, that the said difficult points of Law, arising upon the case, may be argued before the renowned Judges of the Law, so hath been accustomed in such cases, that their opinion may be had thereupon.

Signed John Newbury, John Maynard; and presented to, and accepted by the Lord-Mayor, and the honorable Bench, July 16, 1653.

JOHN LILBURNE.

But the Court being eager to see the Exceptions, the Cryer commanded silence, and to hear the Court, who had commanded their Clerk with a low voice to read them the title of the Exceptions amongst themselves. Whereupon, as soon as the Prisoner at the Bar perceived the Court had heard the title, he desired them to read them all over with an audible voice. But without, my Lord, said he, I beseech you and the Court to take notice, that they are but part of my Exceptions, which the Court hath forced, and compelled me to deliver in.

At which the Lord-Mayor was very angry, and said, Mr. Lilburne, you are very much to blame, thus to abuse and scandalize the Court, so saying we have compelled you; you may take your Exceptions again, if you are not free to deliver them in. Give him them again.

Lilburne, No, my Lord, I will have none of them; for being they are in, they are in; and I will stand to them, and maintain them with my life. And I hope, and doubt not but my hazell and learned Counsel will back them with strong and unrefutable arguments of Law. But, my Lord, hereafter I shall endeavour to keep the Court close to their points, made unto me by their mouth, Mr. Recorder, about the Oyer: for, my Lord, here are witnifles enough of it. But, my Lord, whereas you say I have abused the Court, in declaring that they forced and compelled me to deliver in my Exceptions; my Lord, I absolutely deny it, that that statement is any abuse at all to the Court. You know, my Lord, you have over-ruled me in point of reading my Exceptions about the Oyer, and you have compelled me to deliver in my Exceptions to the Indictment, which you know I have asserted by Law, I ought not to be compelled to, till I have received the Oyer: so that, my Lord, I must yet aver, that in the eye of the Law you have committed a force and compulsion upon me. But, my Lord, I have done with it.

They then came on in reading the beginning of the Exceptions; which (an observant man might easily see) did very much trouble both the Lord-Mayor and the Recorder. But the Prisoner withdrew; and by several of those that sat nigh the Lord-Mayor and Recorder then he stood, he was certainly informed that the Attorney-General *Procurator*, who sat upon the Bench, although he would not speak much openly and publicly, yet he constantly, in a whispering or clandestine way, gave the Court in keep the Prisoner at the Bar to the question, *Whether do you say John Lilburne was in the Act or not?* and to give him so elbow-room to let him get off it: And that Mr. Alderman *Arden* was in a private right condition, when the Prisoner appealed to the people against their injustice. And that the pious Alderman most lamentably cried out to Counsel *Oyer*, precisely to find for some troops of berles, to secure his worshipful person. And that Mr. *Lee*, the Clerk, was extremely fearful to have the Prisoner gaged at the Bar, that he should speak no more; and privately perswaded every ad, immediately to have him condemned and taken away. And that the Lord-Mayor, at the reading of the title, in which the Act is called, *A pretended Act of Parliament*, said unto the Recorder, We are undone, if we receive in this, for we shall be assigned betrayers of our craft. And at the reading the first Exception, the Recorder was moved, and said, he wondered how Mr. Lilburne could get learned men in the Law to sign such Exceptions. And the Lord-Mayor asking him, what that Mr. Newbury was, whose hand was first to the Exceptions; the Recorder told him, he had lately been a Judge in *Wales*. My Lord, I do not so much wonder at his setting his hand to the Exceptions (for I have known him for many years to be a man of principles something in affinity to Mr. Lilburne); but for Mr. John Maynard, one of the greatest Lawyers of England, and one of the greatest practitioners of the Nation, for him to set his hand to such Exceptions, is that (my Lord) amaze me.

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For if this very fifth Exception of Mr. Lilburne be good in Law, then all the late Acts of Parliament are totally invalidated, as well as that which he speaks against.

Then the Court broke up.

Notwithstanding the stiffest enquiry, we can't find that Lilburne, or his friends, at any one, else, ever published the remainder of his Trial. Mr. Winckler, in his *Memorials of the English affairs*, p. 560, says no more than this:

July 13, 1653, Lieut. Col. Lilburne was arraigned at the Sessions in the Old-Bailie, upon the late Act for his Banishment.

July 14, Locut. Col. Lilburne was brought again to his Trial, but he could for further time in regard the Council assigned him refused to appear for him; only Serjeant Maynard, who was sick; and he had an order for a Copy of his Indictment.

July 17, 1653 Lilburne was brought to his Trial, but nothing done in his behalf; and page 563, says, Aug. 11. Lilburne's Trial proceeded at the Sessions-house.

26. Mr. Lilburne's Trial at the Sessions-house proceeded.

30. The Jury found Lilburne not guilty; he pleaded long for himself.

Nothing of their three last days Proceedings are printed.

In a Book, entitled *Lieut. Col. John Lilburne's Trial and Capt. or his Capt and Craft discovered*, 4to, 1653, is recited some of his speeches at his Trial, and Answered thereon; which shows that the Colonel made a notable Defence. His Speeches, as mentioned in that Book, page 125, &c. are as follow.

Concerning the Act whereupon he was indicted, this he said; It was a bye and a sidelong: an Act that hath no reason in it, no Law for it; it was done at *Pleasch* ad, resolved upon the question, that all the male children should be murdered. That if he died upon this Act, he died upon the same force that *Abel* died, being murdered by *Cain*. That the Act was a void Act, a ground thing, their being no one possible or elastic in it, grounded on the Law of England, and that it was an unjust, unrighteous, and treacherous Act, and that he doubted not to shatter that Act in pieces. That they could not make an Act of Parliament, since the King's Head was cut off.

By the same Law they voted him to death, they might vote his banishment twice for ever.

He said, The Parliament before the King's Head was cut off, and the Members taken out, were, in their purity, a perfect Parliament, who were tender of the liberties and welfare of the Nation, and walked in the steps of their ancestors and fore-fathers, then were the days of their vigourity, they made good and righteous Laws, and then they had no force upon them. But here 1640, and 1641, there have been no good Laws made.

He affirms, that it was no lawful Parliament, that made that Act. Again, the Parliament that made this Act of Banishment was no Parliament, I will prove it: And the Parliament was rather nascent than a Parliament, as the Parliament legal, they had no power to bind for me. If there was any Judiciary in Parliament, it was the Lords House, not the Commons.

As for all Parliaments in general, he said Parliaments were a delegated Power, and ought to give a shakin of all they do; and that it was not in their power, (as he had proved in his Plea at large, before the Lord Chief Justice *Robt* and Mr. Justice *Bass*, May 11, 1653, I use but they the least jurisdiction, to sentence him, or any of the least free-born Englishmen, unless it be their own Members. That all crimes whatever were to be heard, determined, and judged at the Common-Law, and so where else. Acts of Assembly were not lawful.

Speaking to the Lord-Mayor; This is the strangest thing (saith he) that ever I saw, that a man must be charged of his life. Good my Lord-Mayor, you have made yourself a party in my case, and taken a wrong John Lilburne; and if you do not make me hang, you are at risk of yourself. You make the said John under your brethren and oppressors; I desire you not to deny me any right, that I may not lose my life in the relief of a question. That John Lilburne shall be hanged, which in time may come to murder your posterity, and the posterity of those that hate me this day.

He said the Lord Justice, that he had nothing to do to judge him, being a party, and had a salary of a thousand pounds for service from the State.

To Mr. *Procurator*, Attorney-General, he said, You are a blood-thirsty man, and you come here to justify your unrighteous Act; and I hope the Jury will take notice of all your violence. It is the administration of my soul, that he should be a Judge in his own case; to have a Man sit as my Judge that thirsteth after my blood.

He said, that the army (many of them) have been very good instruments for the good of the Nation, to deliver us from Tyranny: I wish there was not greater thank they delivered us from.

For the Jury, he called them his honorable Jury, and said they were the Keepers of the Liberties of England; and will make it appear that the Jury are the Judges of the Law, as well as of the Fact.

Moreover, he charged them to consider, whether it is die on the *Affinity*, the Parliament on *Tuesday* stay not pass such a sentence against every one of you Twelve; and upon your wives and children, and all your relations; and then upon the neck of this City, and then upon the whole County of *Middlesex*, and then upon *Hertfordshire*, and so by degrees there be no people to inhabit England, but themselves!

I call *Yehovah* to witness (saith he), and do here protest before God, Angels and Men, I am not the person intended to be banished by that Act, because of the Act, whereupon he was indicted.

The Jury having acquitted him, were summoned before the Council of State, on the 23d of August, 1653, in pursuance of an order of Parliament, of the 21th, to answer for their conduct.

The examination of which Jury is printed in *State-Trial*, Vol. I, page 81, &c. Ad. 1770, after his Trial at *Grindall* in 1649, for High-Treason, to which the Reader is referred. But for what regard the examination of his Jury in 1653 is there inserted (having no relation to that Trial) would be difficult to tell.

B & b

XXV.

XXVII. The Trial of MILES SINDERCOME, alias FISH, at the Upper-Bench, Westminster, Feb. 9, 1656. for High-Treason.

Before the Lord Chief-Justice Glynne, and Mr. Justice Warburton.

JANUARY 1656. Miles Sindercome was committed close Prisoner to the Tower in London, for a High-Treason; and Sir John Barkland, Knight, Lieutenant of the Tower, gave order to Mr. David Sore, one of the Wardens of the Tower, to be his Keeper, with strict orders from the Lieutenant to be most careful of him. But Mr. Sore perceiving the deportments of an indignation, by many violent and threatening speeches, which he often used, acquainted Sir John Barkland therewith, and desired more assistance, as well for the security of his own Person, as of the said Prisoner. Wherefore, from that time forth, a guard of a Captain Officer and Soldiers, were ordered to assist the said Keeper, and secure the Prisoner. So that Sindercome finding no means possible for him to make an escape by his hands, endeavored afterwards to corrupt his Keeper, offering him two hundred pounds, or as much as his place should be worth, to assist him in making his escape; and desired him, if he would undertake the matter, to furnish him with a black suit of clothes, a pike, and a sword dagger, to pass him through the Water-gate, within the Tower, and said, that then he would trouble him no further, but kill any man that should oppose him in going. But his Keeper faithfully discharging his trust, not only refused this proffer, but acquainted the Lieutenant therewith, who was therefore more vigilant and careful for his security. His Officers and Soldiers that daily attended in his chamber with him, would often advise him to make his peace with God, and to look after the eternal comfort of his Soul; which discourse he would always divert by the laughing or by an insolent and scornful, and how many he had slain while he was a Soldier, boasting greatly thereof, and of his knowledge in the Law of this Nation: And would often say, That he doubted not to make a very good divorce, if he might be tried by a Jury, according to the ancient Law of England, and to come off as well as John Lambert.

February 6, 1656. Miles Sindercome had notice of his Trial to be the next Monday following, and had liberty given to prepare himself for it; and for that purpose to send for, and converse with, what persons he would; and to have the use of pen, ink, and paper, and to write as he pleased; which he had, and did use accordingly.

February 9, 1656. Sindercome was brought to his Trial at the Upper-Bench Bar in Westminster-hall, the particulars whereof are as follow.

The Indictment was for High-Treason, to this effect, viz.

THAT Miles Sindercome, alias Fish, and one William Boyes, with divers other Rebels and Treitors, against the Lord Protector, and Government of the Commonwealth, not having the fear of God in their hearts, but moved and incited by the instigation of the Devil, as the 17th of September, 1655, and divers other days and times, as well before as after, at Westminster, and divers other places in the County of Middlesex, falsely, maliciously and traitorously did conspire, compass, and imagine the death of the said Lord Protector; and to subvert and alter the Government of the Commonwealth, and to raise War within the same.

For effecting whereof,

1. They took a crew in the House of one Edward Hilton, and divers crews in the House of one James Middlemore, in Westminster; whereby they brought Guns, Hand-bullets and Pistols, charged with leaden Bullets, and iron Sights, as shot, Rills and powder him.
2. January 1, 1656. They provided Horsemanship and Weapons of War, and,
3. Took a house and banqueting-house at Hammanmith, of one Henry Budy, for the same purpose.
4. January 9, 1656. They conspired to have Whitehall, where his Highness was in his own person; and that they brought a loaded Wind with Musk, Arquebuses, Gascoignes, and other considerable Stuff and Materials, and set the same on fire in the Chapel there, to the great danger and discomfiture of his Highness, and of example of others, in contempt of the Laws, against their due obedience to his Highness and Government, against the Peace, and form of the Statute, &c.

Thus far the Indictment.

Whereupon being serjeanted, he pleaded Not Guilty, and for his Trial put himself upon his Country; and the issue being joined, there was immediately impanelled a Jury of Gentlemen of worth and quality to pass upon his Life and Death; he challenged several of them; and twelve being sworn (with his own consent), his Highness's Attorney-General (the

Indictment being opened) proceeded to the Evidence, which was very full and clear, and two Witnesses at the last to all the points of the Indictment, with many aggravating circumstances: the particulars whereof are herein after mentioned.

The Evidence to prove the Indictment

THERE was one Tyege of his Highness's Life-guard, who was drawn into the business, and he proved fully, 1. What person Sindercome is; how he invited him, the said Tyege, was drawn in house, and received of money, and great preferment, to join with him to murder his Highness; saying, Spain could never obtain a peace with us, till he were taken out of the way. 2. The circumstances of time, place, means and manner designed for this murder. 3. That he, the said Tyege, was to give notice when his Highness went forth; and at what end of the Church he sat. 4. Their buying and keeping of best horses. 5. Their intent to fire Whitehall, the fire-work placed in the Chapel, and other circumstances. 6. Sindercome's resolution, if the fire did not take, to kill the Protector, whatever came of it.

Also one John Gird proved the whole design of Sindercome and Boyes, how long it was in hand; that Sindercome engaged him, the said Gird, in it; what words were said, how it should be done; what the consequence of the murder would be; the money provided, and that when it should have been done, he, the said Gird, was designed to go to Lord Saye, and to share with Sindercome in his honour and profit. That the first thing agreed on, was to provide good horses. What money was paid by Sindercome; Sindercome's resolution to assassinate his Highness when he went abroad; and the manner how. That they were upon the road five or six times on purpose; and in Hyde-park with swords, and pistols charged, and had notice given them by Tyege of his Highness's coming. That the hinges of Hyde-park Gate were filed off, in order to their escape. That they took an house with a banqueting-house at Hammanmith, to entertain him with Guns, made on purpose to carry ten or twelve bullets at a time. That Tyege was to give notice of his Highness's passing that way, and as he rode out of the Church he sat. That he, the said Gird, saw one of the Guns provided, which would carry twelve carbine bullets and a flag. He spoke fully to the design of firing Whitehall, described the fire-work prepared, and the nature and intention it, and other circumstances. Moreover, that Boyes said to them, that when the Protector should be dispatched, forces would come from Spain and Flanders, and a great part of the Fleet would fall off. And that he believed Saye to be the main agent herein at Bristol &c. He proved also the discourse Boyes had about leaving Parliament, or some other part in the West, and of a great fear for that purpose. That thirty or forty are engaged in this design to kill the Protector, and it was ordered, that not above two should know each other, until the matter should be ripe for execution; and that Boyes knew the whole sumbar.

He spoke fully to that design to kill his Highness the full day of the Parliament, and then taking horse for that purpose at Westminster; and bringing arms thither, and other circumstances.

That Boyes goes by several names, and in several habits; sometimes as a poor Priest in ragged clothes, sometimes well clad as a Gentleman.

It was further proved by the said John Gird, and Col. James Middlemore, that in order to the destroying of his Highness, he, the said Gird, Sindercome, and Boyes, took the said Middlemore's house near the Abbey at Westminster; and when they took it, Sindercome called himself John Fish, Clerk to one Mr. Hewson, a pretended Gentleman of Norfolk; and Gird went by the name of Mr. Hewson's Coachman.

It was proved likewise, that the last day of the Parliament, after they had taken Middlemore's house, by being there, Sindercome and Gird went thither to him, from one Edward Hilton, a Scotchman's house in King-street Westminster, where they left a great trunk full of arms, brought from Flanders; and carried with them in a viol-case, one arquebuse, and some pistols, charged with leaden bullets, and flints, about German-time, to Middlemore's house; which they found very convenient for their purpose, and refused to buy it, and to build a room in the yard next the street; there being several back-yards and doers; and refused also to secure Middlemore, or otherwise to deal with him that he might not discover them, nor hinder their design.

It was proved, moreover, by Cecil and Middlemore, that Sermon being ended, all three of them, viz. he, the said Gird, Sindercome, and Boyes, went into the yard of the house next the Abbey, to thrust his Highness, as he pulled from the Abbey to meet the Parliament in the painted Chamber; (the

* The principal Person employed in the treasonable design, for the destruction of his Highness's Person, was a notable desperate Fellow, named Trevelyan, one who before there had been a Quarter-Master either under Sir John Reynolds in the Army, and was about two years ago called off by General Monk, among others in London. He attempted to murder one Gird, and many others were engaged in the Design. For the carrying on their work, they had correspondence with James Sindercome, received directions thence from him. In June, and in the month of July, 1655, he came into London, and lived in the house of one Mr. Hewson, with which they were acquainted to proceed. See a Brief Relation of the late dangerous Plot. Printed in a further Narrative of the Plot of the late Times in the Commonwealth of England, pag. 7.

† In Col. Richard Jones's Narrative, which he delivered to Sir John Barkland, Lieutenant of the Tower, Oct. 20, 1657, printed in a further Narrative of the Plot of the late Times in the Commonwealth of England, pag. 21. he says, "Sir John, I beg to tell you, that I am partly of the whole business of Sindercome, as to the design of killing the Lord Protector, &c. and to that purpose I brought Sindercome with about good. In money, and also with Arms, and told him so. Expectation, that he should not retract the design." And further he said, "The Letters they bore of mine, they could not prove them to be mine, but by my own Conscience, which I now confess, and acknowledge that they are mine. And that I was with Sindercome, and acquainted him, that I was an enemy to the Lord Protector; and I also declare that I received a large sum of money from the Sindercome to carry on my said design, and to make what Confession I could in England, by endeavouring the killing of the Lord Protector, and by so on said for that in design; and to the said letter to effect it, I came into England on a disguised Habit, and as a free provided as positive on others as the said design." And again he says, "That he was the only man, that said to Sindercome to kill the Lord Protector; and that Sindercome, called King as Lord, did, he proved, and to do he was full of that judgment; yet still, he was both faithfully and knavishly close in that Book to charge the Lieutenant of the Tower teaching Sindercome's Death." The Col. sends also a Prisoner in the Tower, Feb. 23, 1657.

‡ This Sindercome had received, his Friends sent in Sweden, and would have engaged the said Mr. Gird thence also.

§ Miles desired fully concerning the Viol-case and Trunk of Arms.

and to that end, he, the said *Crail* stood on the wall with his pistol charged, and *Sindwene* walked in the yard, but other company coming in thicker, they were prevented, and *Byss* went out of the yard into the throng of people.

It was further proved by *Crail*, that this enterprise not succeeding, they resolved to murder his Highness's men on their way, to wit, to furnish themselves with their horses, to kill him as he rode forth. That *Sindwene* engaged *Topsy*, who constantly gave him notice of the Lads going along ahead, or of the fiddling of the *Pal Nags*.

That the first time they rode forth to kill him, was the latter end of September last (viz.) the Saturday after he had left going to *Hammer-smith*.

That the second time was when he rode to *Kingsgate*, and thence, the back way to *London*.

The third time, when he went to *Hyde-park* in his Coach.

The fourth time, when he went to *Trafalgar-Green*, and so by *Abbe* home; at which time they rode forth to kill him, and resolved to break through all difficulties to effect it.

The fifth time, when he rode into *Hyde-park*, where his Highness's alighting, after him, the said *Crail*, whole horse that was he rode on, *Sindwene* being then on the out-side of the *Parl*, and then *Crail* was ready to have done it, but doubted his horse, having at that time got a cold.

That *Sindwene* rode forth once himself to kill his Highness, and told *Crail* of it.

That all proving ineffectual, they resolved to defile till the Spring, and in the mean time to live *Whithall*.

That the said *Crail* put on a new holland shirt, and thin clothes, for his better escape, when he rode forth to kill his Highness, and prepared his horse as if he had been to run a race.

To prove the taking of the house and banqueting-house at *Hammer-smith*, of *Henry Byss*, Coachman to the Earl of *Salisbury*, there was before *Crail*, the testimony of *Henry Byss* himself, *William Page*, and *William Nash*, *Sindwene's* servants.

To prove the burial of *Byss* for firing the Chapel, there was the testimony of *Crail* and *Topsy*, and others who were persons of quality.

To prove the buying and keeping of the horses, there was the testimony of *Henry Byss*, who told them one horse for fourscore pounds; also *William Page*, and *William Nash*, *Sindwene's* servants.

To prove the kinging of *Hyde-park* gate being filed off, and the gates cut, there was the testimony of *John Crail*, and *Thomas Skill*.

The Prisoner being the Evidence to clear himself, had nothing material to say for himself by way of defence, yet carried himself very insolent at the bar, and when the Court asked him touching any of the matters proved against him, he would confidently deny what was laid to his charge. And after all the Evidence given, and the Prisoner heard what he had to say for himself, the Court summed up the whole to the Jury of Life and Death, and declared, that by the Common Law, to conspire or imagine the death of the chief Magistrate of the Land, by what name soever he was called, whether Lord-Provost or otherwise, is High-Treason; he being the chief Magistrate, and the Spring of Justice, in whose name all Writs run, all Commissions and Grants are made; and that the Statute of Treason made 25 Ed. III. as to this, did only declare what the Common Law was before the making of that Statute, and was not interdictive of a new Law; and more to that effect; and then proceeded to Judgment against the Prisoner in this manner.

THE SENTENCE.

IT is considered by the Court, that the said Miles *Sindwene*, alias *Pith*, is first from hence to the Prison in the Tower of *London*, from whence he came, and from thence to die upon a scaffold before the Jews of *London* in *Tyburn*; where to be hanged on the Gallows until he be dead, and then to be cut down, and his entrails and bowels taken out, and burnt in his own sight, and his body divided into four quarters, and be disposed of as his Highness the Lord-Provost shall think fit.

The same day, after he was brought back again to the Tower, he was much changed, and in a great passion, his Keeper, and *Edmund Herriot*, one of his Sisters, being in the chamber with him, he did swear, That they should never know his life; and then desired his Keeper to help him to force poison, that he might make away himself, which he refusing, *Sindwene* then desired his Sister to buy him some for the same purpose. But the crying at this point, gave him no answer; but taking her opportunity (when the Keeper did not so much mind them) had some private discourse with him (which cannot be known what it was about). Presently after, his said Sister left him, and before her going, spoke to his Keeper, saying, Lord, what shall I do? Did you hear what my Brother said of the Poison? Thereupon, the Keeper charged her not to bring him any, telling her, if his Brother were poisoned in his house, he would accuse her for afflicting him in it.

The Lieutenant of the Tower then being fully acquainted with the desperation of *Sindwene*, commanded a file of Soldiers to watch in the room below his chamber, and a Guard of Officers to be with him in his chamber, that all means for the making his escape might be prevented.

Sindwene the same day endeavoured to corrupt his Keeper, as formerly, and with much somewhat prettily him to be helpful to him in his greatest distress; and asked, if it were not possible for him to make an escape, telling him, if he would assist him in it, he would make good to him two hundred pounds that night; and if he would go along with him, he would make three hundred pounds, seven hundred pounds, or what more he should desire, further recompensing him to furnish him with a black suit, peruke, and dagger, for that purpose. But by reason that the Officers were then in the chamber with him, he had not liberty to freely to discourse with his Keeper about this business as he desired, and therefore

earnestly desired the said Guard of Officers, and all in the chamber with him, to withdraw; in which time he wrote and delivered privately to his Keeper a note, whereof the next following words is a copy:

Mr. Steer,

YOU for my condition, it is no time to dally with it; I have already provided two hundred pounds for you; and if you will let me make my escape, and that you will go with me, or for me, I will give you, were it five hundred pounds more, I do not care. If you will do any thing, let me know your mind; I hope God will work my deliverance by your means; let me have your pardon; that we may conclude for if you and I conclude, I will have other clothes brought into the room below, with a torse, and I will take up a board (meaning, as it is conceived, one of the boards of his chamber, to go down into the room below it, where his black clothes should lie; though thence he would have been frustrated, by reason of the file of Soldiers, which the Lieutenant had commanded to watch there; and I do judge that must be the way. For God's sake do what you can, and do not distrust my not performing to give you the money; for I can this night order you two hundred pounds to any body that you shall appoint: but if you should—

You may observe, that the reason of his breaking off so abruptly, was, that the Guard of Officers, whom he had for that time desired to withdraw, finding that he made them stay somewhat longer than ordinary, prettily upon him, so that he had not time to write further. His Keeper for answer, endeavored to take him off from these thoughts, telling him the impossibility of it, and desired him to consider his present condition, and prepare himself for another world; whereupon *Sindwene* finding he could no ways prevail, made these things no more afterwards.

From which time, several pious and able Divines, some of which were appointed by his Highness, and others that were desired by the Lieutenant of the Tower, daily came to him; as Mr. George Griffith, Mr. Thomas Brooks, Mr. John Hodge, Mr. Sizer, Mr. Barker, and others. But before they or any others entered into discourse with him, he would were all questioning of him about the business for which he was condemned: they laboured much with him for his soul's good, but with no satisfaction to the greatest part, and with very little to others of them; he having before declared his judgment, or rather opinion, by reason of his inconsistency and unbeliefness in them, sometimes owning the universal pain of redemption; at other times, that the devil did with the body, or spirit with the body till the Resurrection, and then it was it should rise; that is, the great Hell was now, with several other desirable ones. And indeed there is scarce any erroneous opinion known in our times, that he had not a general notion of, and would pretend unto. In several of his discourses with those Ministers, he would not hear but that *Judas* was in as good a condition as *Peter*; and of that in the words of *John*, v. 12. where Christ saith, While I was with them in the world, I kept them in my name, that they should not die; and now of them is left but the Son of Perdition, that the Son of man might be glorified: he would say, it was meant to all men, who as they were sinners, were Sons of destruction and perdition. And as to that Text, speaking of the disciples, which faith, one of them was a Devil; he would baffle and say, it was a rugged and harsh saying. He would often put it as a case to them, whether for any person to contrive the death of another, and not to let it, were punishable by man? And being as often refused, and told of the Laws made in that case; he would answer, that which they alleged was his Law of man, and that *Thoughts* were not to be punished by man, but God who alone knew them.

Friday 13th of February.

Afterwards he had notice given him, that the next day was appointed for his Execution; and about eight o'clock that night, the Guard of Officers in his chamber, were Captain *Henry Sharp*, Captain-Lieutenant *William Pither*, Ensign *Philip Brown*, Sergeant *Nicolaus*, and his said Keeper. And presently after they came into the chamber, three Women came to him, two whereof were *Sindwene's* Sisters, and the other most of all to be his Sweetheart, who expelled trouble and sorrow, lamenting his condition. And one of his said Sisters, named *Elizabeth Herriot*, told him, She had rather go home to her father's house, than that he should be so long as a death as was intended him, or so that effect; whereupon the Officers minding her expressions, took what care they could to prevent her in giving him any thing, and as soon as the said Women were gone carefully searched the room. Then *Sindwene* desired the Officers and his Keeper to withdraw, that he might be private; in which privacy, he continued about a quarter of an hour, then came to the chamber-door, saying to the said Officers that stood without, They might come in, for he had now done; which words being not usual with him, were observed by most of them. The first that went in, found him rubbing his hands with his handkerchief, and wiping his nose and moistening his mouth, and he walked a pace or two about the room, and then took the Bible, and sat down reading therein. A while after he stood up suddenly, saying, He would go to bed; and thereabout he walked himself, and went into his bed. The said Guard of Officers in his chamber, being then discoursing together, *Sindwene* (a quarter of an hour after he had lain full) discoursed very freely with them of what they were talking. About which instant of time, orders were sent from Sir *John Berkeley*, to the said Officers, to be careful that he should not make away himself by poison, in regard it was the last night he was to be there; and they should diligently search all places of his chamber, and about his bed to prevent it. But presently after, *Sindwene* fell asleep (as was thought), and snoring somewhat unusually, one of the Officers desired his Keeper to take a candle and look upon him, whether he did, and found him almost dead there, which proved their further terror. Whereupon a Surgeon was immediately sent for, who applied medicines to him; notwithstanding which, after he had continued in that condition speechless about two hours, he died.

February

* Mr. *Herriot*, in his Memorials, Page 64. Feb. 9. 1646. *Sindwene* was tried at the Upper-Bench Bar, found guilty, and condemned to be hanged, drawn, and quartered. The Court decreed, That the Lieutenant Lord in camp, as was the Duke of the Chief Magistrate, by what means he was so called, whether Lord-Provost, or otherwise, is a High-Treason, and that the Statute at Edw. III. was only declaratory of the Common Law.

† *Sindwene* had been an Apprentice to a Churchman, near St. *Caroline's* at the Tower, and it is probable had more than ordinary knowledge of *Protestant*.
‡ Lord *Caroline*, in his History of the Revolution, Vol. III. Part 2. (viz. *Edmund Page* 447, 448, says, *Sindwene* was a very stout Man, and was who had been much in his (Common) law's office, and who had been an attorney, he was wonderful and unaccountable. Accordingly, being disappointed in the manner he made him to kill him, and that *Crail* was so called him to be apprehended; his behaviour was so strange in his Examination and Trial, as if he thought he should still be able to do it; and it was minded that he had

February 14, 1636.

The Court being assembled, consisting of Merchants, and other substantial Householders of the Parish of St. Martin in the Liberties, were in charge to inquire of the manner of Sindercome's death, which they diligently attended; and all such witnesses as could speak materially thereunto were examined by the Court. And although there were then very strong presumptions that he had poisoned himself, yet in regard the Surgeons, who had then only opened his body, and having no usual symptoms accompanying the taking of that poison, could not positively deliver their opinion, otherwise than hereunto in expresse, the Jury deferred the giving up their verdict till the next following.

The next day afterwards, at the desire of the Lieutenant of the Tower, Sir Richard Nepeur, Doctor of Physick, and Doctor Fries, Reader of Anatomy at Gresham College, opened Sindercome's head, and gave their opinion thereof also. Which was likewise afterward viewed by Mr. Charles Stamford, Mr. Nicholas Brewhar, Wardens to the Company of Surgeons, and Mr. Lawrence Lee; all able and knowing persons in their profession, which remain with the said Coroner under their hands.

February 14, 1636.

Being then desired by Sir John Brouncker, Knt. Lieutenant of the Tower, to (in the head of Miles Sindercome) opened, his body having been opened before our coming by the Surgeons, and to give him our observation and sense thereof.

WE found the Brain much inflamed, red, and distended with blood, as full as full as the skull could well hold; besides much greenish and bloody blood out of the Ventricle, which was the effect of some very violent and preternatural cause. Yet we are not able positively to determine what that is, or whether it did poison, the matter being much more subtle and of a subtler sort than of Apoplexy, and after longer dissection of the Brain, except some confusedly, and other the like can ordinary venous.

Richard Napier,
Christopher Fenn.

WE, whose names are here subscribed, being desired to open the body of Miles Sindercome, Prisoner in the Tower of London, do hereby declare, according to the best of our judgments and experience, that we could not find out or discover any, the usual or common symptoms or effects, accompanying the taking of poison and those poisons causing sudden death, but by the distension and swelling of the Brain, and Puffs in the Head, with much coagulated blood which we found there, more than is ordinary effects, nor opinions are, that the said Prisoner hath enjoyed the same by some extraordinary means, for the heightening of his death.

Charles Stamford, } Wardens.
Nicholas Brewhar, }
Lawrence Lee.

February 15, 1636.

Being Sabbath-day, Sindercome's Keeper, with others, having removed the body out of the chamber where he lived, into a more airy place, and taken several things out of that chamber, removed the Cloth-dress, and under it was found a Paper subscribed with his own hand as following:

GOD knoweth my heart, I do take this curse, because I would not have all the open shame of the World executed upon my body: I desire all good people not to judge any of me; for I do not fear for my Life, but do only Grieve with my Soul. I feel this curse, the penalty of my sins in the world: I am before God and the world, clear my Keeper, my Sisters, Mother, or Brother, or any other of my Relations, but it was done alone by myself. I say by me.

The 13th day, 1636.

Miles Sindercome.

February 16, 1636.

The Jury fate again according to adjournment, so when the aforesaid testimonies of the Physicians and Surgeons, and also Sindercome's own were apparent; so that they did then unanimously resolve and agree, that he, by some extraordinary means, had caused his own death, and that they verily believed the same to be by poison. But for their further direction, as to the formal part of their verdict, they at that time deferred the giving of it, and adjourned till seven o'clock the next morning, at the Lord Chief-Justice's house, where they accordingly met; and having received his Lordship's direction touching matter of fact, did all unanimously agree on, and give up their verdict, to the effect following:

February 17, 1636.

Miles Sindercome, otherwise Fisk, late of the Parish of Peter in Breda, in the County of Middlesex, God not having helped his eyes, but by the instigation of the Devil being moved and seduced, at the Tower of London, in the Parish and County aforesaid, feloniously, wilfully, and of his own towards himself aforethought, as a Felon against himself, then and there feloniously upon himself did make an assault. And that the said Miles Sindercome, otherwise Fisk, then and there, certain poisoned powder, through the use of him the said Miles, into the head of him the said Miles, feloniously, wilfully, and of his malice towards himself aforethought, as a Felon of himself, feloniously did thrust and draw, by reason of which loading and drawing of the poison aforesaid, by an assault, into the head of him the said Miles Sindercome; he the said Miles Sindercome, by the strength and operation of the poison aforesaid, himself did mortally poison; of which said mortal poisoning, he the said Miles Sindercome, otherwise Fisk, within three hours after died. And so we find

him some Afflictions, which were undeciphered and as subtle as himself; and though he (Crawford) had got him condemned to die, the Fellow's carriage and words were such, as if he knew well how to avoid our Judgment; which made Gurneall believe that a Party in the Army would attempt his rescue. Whomsoever he gave Fisk charge that he should be carefully looked to in the Tower, and three or four of the Guard always with him day and night. At the day appointed for his Execution, that night Gurneall was much surprised, how placed upon the Scaffold, where they found him dead in his bed, which gave more suspicion to Gurneall; for he believed that he hoped that, at his Death, to avoid the usual manner of it, he would have desired many of his Company to stay; he saw found himself under the right speech of having come to be poisoned, as not daring to live any longer; he saw that he could not be brought that night. It appeared upon Examination, that the night before, when he was going to bed in the presence of his Lord, his brother came to take him to his bed, and again lay down with him in his bed, and kept him in bed, and (as he said) this was the last bed he should ever go to. His body was washed by a society of gentlemen where he should have been brought, and buried under it, with a stake driven through him, as if it was the case of his death; yet this account perplexed Gurneall very much, and though he was without the particular discovery which he expected, he made a general discovery of it, that he himself was more curious in his own than he believed he had been.

that the aforesaid Miles Sindercome, otherwise Fisk, the said 13th day of February, in the year aforesaid, at the Tower of London aforesaid, in the Parish and County aforesaid, in manner and form aforesaid, feloniously, wilfully, and of his malice towards himself aforethought, as a Felon against himself, feloniously himself did kill and murder. We find no Goods or Chattels, that the said Miles Sindercome, otherwise Fisk had, at the time of the felony and murder aforesaid, in manner and form aforesaid, upon himself, floss and consumed. In witness whereof, we have hereunto set our hand, this 17th day of February, 1636, 16.

And thereupon the said Coroner issued forth his Warrant for the burial of Sindercome, the Copy whereof followeth:

Middlesex J. W. HERRIS the Jury impanelled and sworn to inquire of the death of Miles Sindercome, otherwise Fisk, did produce upon their Oaths, that the said Miles, the 13th of this instant February, did feloniously poison himself: There are therefore in the name of his Highness, the Lord Protector of the Commonwealth of England, Scotland, and Ireland, so request you to bury the corpse of the said Miles Sindercome, according to Law, in the next common highway. Hereof you are not to fail, as you will answer the contrary at your perils, under the 17th day of February, 1636.

Thomas Evans, Coroner.

To the Constable and Headborough within the Liberty of the Tower of London.

On the last day, February 17, Miles Sindercome aforesaid, being found to have murdered himself, his body was according to Law drawn to the open place upon Tower-hill, at a half's tail, with his head forward, and there under the Scaffold of common execution a hole being digged, he was turned in stark naked, and a stake spiked with Iron, was driven through him into the earth; that part of the Stake which remained above ground being all plaited with iron.

The Execution of Elizabeth Herring, the Wife of William Herring, of the Parish of St. Katharine's, Alderbury, taken upon Oath, the 14th of February, 1636.

SHE saith, that Miles Sindercome now dead was her brother, and that he was a Prisoner in the Tower of London the space of three weeks last past, or thereabouts, to her knowledge; and that for the space of a fortnight he was at the Tower several times to see the said Miles, and could be admitted but once to see him, under the 4th day of February, the said Informant was sent for to come to the said Miles. When she came to the said Miles, she found two Gentlemen in the room with him; who, as soon as this Informant came in, did say unto the said Miles, that he was not to speak any thing in private to this Informant; then this Informant came away. And that the same several times after to the said Miles; that on Monday the 9th of this instant February, she came to the said Miles after he had received sentence to die; and investigating his condition, the said, that he would bring his Mother's grey hairs with sorrow to the grave, and what an open flame it would be to him and all his friends. The said Miles Sindercome then did answer, saying, that before they should have his life to be forfeited (meaning his Highness the Lord Protector, as this Informant believeth) he would poison himself first, and desired her, this Informant, to buy him some poison, which she refused. And that at times when this Informant hath been with the said Miles, she did for some strange faces which she did not know, and that she came every day since Monday, once a day or more to the said Miles; and saith, that he the said Miles did not speak any more words to her of any poison, or any other words of discontent, as if he intended to destroy himself; and that he never did complain to this Informant of any sickness or diseases that he was troubled withal. And that on Friday, the 13th of this instant February, he being alone with the said Miles Sindercome, did persuade him to confess with her a hand with him in the plot against his Highness the Lord Protector; that if he would confess, his Highness would grant him his life, and wished him to trust to God and man; and the said Miles answered, he would have it under black and white, and that he would trust no man. And that about eight of the clock at night he parted from the said Miles, and left him in good health, being prepared to die, as she thought; and that he found in his own conscience he had made his peace with the Lord, and this Informant desired that he over brought him any poison, or did buy any other thing to destroy him; yet confesseth that on Friday night the day for the death of the said Miles, that the desired with all his heart, to see him die a natural death at that chamber. And further saith not.

The Mark of a Blackish Herring.

The Information of Martha Wickham, Spinster, taken upon Oath, at aforesaid.

SHE saith, that she hath known Miles Sindercome for the space of four years last past, and that she lodged at the house of Daniel Stinchard, Haberdasher of Hats on London-Bridge, where this Informant lived; and that the night before he was taken into custody, and imprisoned, he lay at his lodging in the said house. And this Informant desired, and saith, that the both not know any of the company that used to come to the said Miles, while he lodged there; and saith, that she hath been several times to see the said Miles at the Tower of London, while he remained there; and saith, that she doth not know of any poison, or any other violent thing, which was brought or sent to the said Miles Sindercome, to destroy himself; and further saith not.

Mortis IPIDEM.

The Information of Anne Pierce, Wife of Stephen Pierce, of Deptford, in the County of Kent, Mariner, taken upon Oath, as aforesaid.

SHE faith, That she was several Times to see *Miss Sinderome*, the time was in the Tower of South, That she doth not know of any Poison, or any other violent Thing that was brought to the said *Miss* to destroy himself, and she did never hear the said *Miss* speak any Words, as if he intended to destroy himself by Poison, or any other way: And further faith not.

The Mark of A Anne Pierce.

Middlesex II. *The Information of William Foster, taken upon Oath, the 14th Day of February, 1656, before Thomas Evans, Gent. one of the Clerks of the County of Middlesex.*

HE faith, That on *Friday*, the 13th of *February*, about nine of the Clock at Night, he was in the Chamber where *Miss Sinderome*, otherwise *Fy*, lodged, within the Tower of London; faith, That the said *Miss Sinderome* did desire this Informant, and *four* more that were with him, that they would withdraw out of the Chamber whilst he went to Prayers; and within less than a Quarter of an Hour after, he called as the Informant, and those that were with him, into the Chamber again; and a Quarter of an Hour after that, the said *Miss* did take a Book into his Hands to read, and said, that he would go to bed, and that that was the last Night he should go into a Bed, and the last Bed he should go into. And then he lay down in his Bed, and, to this Informant's thinking, fell asleep, and died. And this Informant desired *Daniel Storr*, *Miss Sinderome's* Keeper, to take a Candle, and to see how the said *Miss* did lie in his Bed; and the said *Daniel Storr* did tell the Informant, that the said *Miss Sinderome*, alias *Fy*, was almost dead as he lay in the Bed; but the said *Miss Sinderome* did lie in that Condition spaceless the Space of two Hours, and then died.

The Mark of F William Foster.

The Information of Philip Brown, taken upon Oath, as aforesaid.

HE faith, That on *Friday*, the 13th Day of *February*, about ten of the Clock in the Forenoon, he was with *Miss Sinderome*, otherwise *Fy*, in his Chamber, and fled there at Dinner, and in the same hour, while that they were at Dinner, the said *Miss Sinderome* did say these Words, That this was the last Night that ever he should see, as he thought. And after, two of the said *Miss's* Sisters, a Cousin, and another Gentlewoman with them, came to see the said *Miss*, and did then persuade him, the said *Miss*, to confide to them, and to declare where they were, who had brought him into these Troubles and Sorrows that he was like to undergo. And he answered them, saying, To whom should he confide? He could not expect Mercy from him, who was resolved to give him none; saying, that *Cromwell* had to him, when he was taken and brought before him, *Sinderome*, have I caught you! you that have fought many Ways to take away my Life, I will have no Consideration at all of thy Life. And when he had uttered these Words, he was in a great Passion, and said, That he might go and declare against the Lord *Parnell*, the Lord *Leveson*, Sir *John Berkeley*, Sir *Thomas Pride*, or any other Member of the Army, if he were minded to destroy innocent Blood. And about seven of the Clock that Day, Orders were brought to this Informant from the Major, that the said *Miss Sinderome* might have some time allowed him apart, to prepare himself, if he desired it. And this Informant went out of the Chamber, and left the said *Miss* alone; and a Quarter of an Hour after, this Informant standing at the Chamber-door, did see the said *Miss* kneeling on his Knees on the Ground by the Bed-side, and presently after one of the Gentlemen that stood at his Chamber-door, did tell this Informant, that the said *Miss* did cough and choke, as if he was vomiting; and this Informant opened the Chamber-door, and went in, and found the said *Miss* walking about the Chamber. And Capt. *Fyger*, and Capt. *Storr*, who were ordered to be there that Night, then came into the Room; and about nine of the Clock at Night, the said *Miss* did desire this Informant, and the other Company that were there, to withdraw out of the Room, and about a Quarter of an Hour after, he called them in again; and the said *Miss* did then take a Book into his Hand to read, and said, that he would go to bed, and that that was the last Night he should ever go to bed, and the last Bed he should lie in; and then laid him down in his Bed. And then Capt. *Storr* did desire *Daniel Storr*, the said *Miss's* Keeper, to see how he did lie in his Bed; and the said *Daniel Storr* looking upon the said *Miss*, did by words to this Informant, and the rest there, that the said *Miss* was almost dead: And yet the said *Miss Sinderome* did lie in that Condition the Space of two Hours, and then died.

The Mark of F Philip Brown.

Middlesex II. *The Information of Daniel Storr, Gent. taken upon Oath, as aforesaid.*

SAITH, That about the End of *January*, *Miss Sinderome*, alias *Fy*, being a Prisoner in the Tower of London, under the Custody of Sir *John Berkeley*, Knight, having come Discourte with this Informant, who was his Keeper, did then say unto this Informant, that if he would be faithful to him, the said *Miss*, he would give him the Value of his Place, what it was worth, were it a hundred or two of Pounds, and desired him, this Informant, if he would undertake the Business, and secure of his Profit, to provide him the said *Miss* a black Suit of Clothes, a Peruke, and also a short Dagger, and to pass him out of the Water-gate, and he would kill any Man that should oppose him, and the same Day that he was at his Trial, being the 9th of this instant *February*, after he came back again to the Tower, the said *Miss* was in a great Passion, his Sister *Elizabeth Herring* being then in his Company, he said *Miss* then did swear, that they should not have their Lives (meaning, as this Informant believeth, that the Sentence pronounced against him that Day should not be executed). And then the said *Miss Sinderome* did desire this Informant to help him to give Poison, that he might make away with himself, and this In-

formant refusing to do any of these Things which he desired, the said *Miss* then did speak to the said *Elizabeth Herring*, his Sister, who was there, to bring him some Poison; but the said *Elizabeth* crying, gave him no Answer. And afterwards the said *Miss*, and the said *Elizabeth*, had some private Discourse together in the Room, which this Informant did not hear. And the said *Elizabeth* parting from the said *Miss*, came down Stairs, and did speak to this Informant, saying, Lord, what shall I do, did you hear him what he said of the Poison? And this Informant answered, That he did hear what he said, and wished but not to bring him any; and further said to the said *Elizabeth Herring*, that if the said *Miss* was poisoned while he continued in this Informant's House, that he this Informant answered, he would charge her the said *Elizabeth* with helping the said *Miss* to Poison. And then the said *Elizabeth* was away from this Informant; and this Informant went up into the Chamber so the said *Miss Sinderome*, who asked this Informant, if it was not possible for him to help the said *Miss* to make an Escape now in his great Distress; and further said, that if this Informant would do it, he would make good to him 200 l. this Night. And then said, that if he this Informant would go along with the said *Miss*, when he escaped, he would make that 200 l. good, or what more he should desire; further requiring earnestly, this Informant to help him to a black Suit, and a Peruke. This Informant then said to the said *Miss Sinderome*, that it was impossible for him to make an Escape, there being such strict Guard kept about him; and had so further Discourse at that time. And that on *Friday*, the 13th Day of *February*, about one of the Clock at Night, this Informant then was with the said *Miss* in his Chamber, together with Captain *Henry Storr*, Captain-Lieutenant *William Fyger*, *Edging Philip Brown*, Sergeant *Nathaniel Storr*, and the said *Miss* did desire this Informant, and the rest of the Company, to withdraw out of the Room, which they did; and about a Quarter of an Hour after, he the said *Miss* did desire them to come again into his Chamber, he walking a Turn or two about the Room, did take into his Hand a Bed to read in, and a while after, he flared up suddenly from the Place where he sat, saying, He would go to bed, that that was the last Time he should go to bed, and the last Bed he should lie in. And when the said *Miss* had lain a while in his Bed, he fell asleep, and sooted, and after that he had a rattling in his Throat; and this Informant was bid to take a Candle, and see the said *Miss* as he lay in his Bed; and when this Informant had looked upon the said *Miss*, he found him almost dead as he lay in his Bed. And this Informant being further asked, if he knew of any Poison, or any other Means, with which the said *Miss* did use to take away his Life, faith, That he did not know any, neither could he know any more touching the said *Miss's* Death, but what he hath already declared in this Information.

Daniel Storr.

The Information of Henry Sharp, Gent. taken upon Oath, as aforesaid.

SAITH, That between seven and eight of the Clock on *Friday Night*, being the 13th Day of *February*, being in the Chamber with *Miss Sinderome*, otherwise *Fy*, these Women, whose Names this Informant doth not know, came crying into the Chamber to the said *Miss*, lamenting his Condition; the said *Sinderome* then reaching as a Bed, did he continued reading about that in Bed, while the said three Women were there. One of the said Women said to him, the said *Miss*, that he would be glad to see him dead in the Room before he went from thence, rather than to have him die such a barbarous Death as was appointed for him to die. And after they were gone out of the Room, this Informant called *Daniel Storr*, the said *Miss's* Keeper, to search the Bed and the Room, lest any thing might be left there for the said *Miss* to hurt himself with; and the Room being searched, nothing was found. And also upon Enquiry of the said *Storr*, this Informant found that all Instruments were taken from him; only the said *Storr* brought him up a Knife to cut his Meat withal, and carried it away when he had done. And that about Half an Hour after, he the said *Miss* desired this Informant, and the rest of the Company that were with him, to withdraw out of the Room; and about a Quarter of an Hour after, he called them into the Chamber again, and took a Book into his Hand to read in, and after a little Time, he said he would go to bed, and he down as in his Bed; and he hearing this Informant and Capt. *Fyger* talking together, the said *Miss* talked very freely with him; and in the Time of their Discourse together, there came a Messenger to this Informant from Sir *John Berkeley*, requesting this Informant to have a special Care of the said *Miss Sinderome*, otherwise *Fy*, that he did not poison himself. This Informant did declare unto the other that were there, what Order he had received for the said *Miss*; and about a Quarter of an Hour after, this Informant bearing him the said *Miss* away, desired *Daniel Storr*, the said *Miss's* Keeper, to see how the said *Miss* did lie in his Bed. And the said *Miss* taking a Candle to look on the said *Miss Sinderome*, did tell this Informant that he was almost dead; yet the said *Miss* did lie in that Condition, speechless, the Space of two Hours after, and then died.

Henry Sharp.

The Information of Elizabeth Sinderome, of Deptford, in the County of Kent, Widow, taken upon Oath, the 14th of February, 1656.

SHE faith, That she was three several Times to see *Miss Sinderome*, her Son, while he was Prisoner in the Tower of London; and faith, she doth not know of any Poison, or any other Means, or Ways used by the said *Miss Sinderome*, or any other, to hasten his Death; neither did she ever hear him speak any Words to that purpose. And that the last time she was with the said *Miss*, he did then tell her, this Informant, that he was prepared to die, and that two Ministers being then in the Chamber with him, he had no further Discourse with him, or did see him any more, until on *Friday Night*, about twelve of the Clock, he did hear the Sea sent for; and did hear that he was very sick and weak, of which *Stokens* he did greatly after, and further faith not.

The Mark of a Rhipant Sinderome.

XXVIII. Proceedings against ARCHIBALD, Marquis of Argyle, 13 Car. II. 1661, for High-Treason.

The Grand Indictment * of High-Treason, exhibited against the Marquis of Argyle, by his Majesty's Advocate, to the Parliament of Scotland.

A RCHIBALD, Marquis of Argyle, you are indicted and accused, and are to answer at the instance of Sir John Fisher, Knight, his Majesty's Advocate for his Majesty's Honour, That whereas by the Laws of God, expressed in holy Writ, by the Laws of Nations, by the Common Law, and by the Statute Laws and Practice of this Kingdom, especially by the third Act of the fifth Parliament of King James I. and by the first Act of King James VI. of blessed memory, and by several other Acts of Parliament, all good and loyal Subjects of this Kingdom are bound and obliged perpetually to acknowledge, obey, maintain, defend and advance the Life, Honour, Safety, Dignity, Sovereign Authority, and Prerogative Royal of their Sovereign Lord and King, their Heirs and Successors, and Privilege of their Crown, with their lives, lands and goods, to the utmost of their power, constantly and faithfully to withstand all, and whatsoever persons or estates, who shall presume, profess, or intend any ways to impugn, prejudice, or impair the same, and shall no way intend, attempt, engage, sell or do any thing to the violation, hurt, denigration, impairing or prejudice of his Highness's sovereignty, prerogative, and privilege of his Crown, or any part or part thereof, and whatsoever both the contrary, so be punishable as Traitors, and to forfeit their lives, lands and goods. Likewise by the 15th Act of the 6th Parliament of King James II. and by the 75th Act of the 9th Parliament of Queen Mary I. all rising in fear of war against the King's Person or Majesty, all attempting to raise any band of men of war, horse or foot, in warlike posture, without special licence of the King's Majesty, and all furnishing of them, in help, refresh or counsel, are punishable as Traitors. Likewise by the 43d Act of the 3d Parliament of King James I. and by the 13th Act of the 11th Parliament, and by the 14th of the 12th Parliament, and by the 205th Act of the 14th Parliament of King James VI. it is statute and ordained, that no Subject, or whatsoever condition, degree or quality, shall presume to take upon him publicly or privately to decide, speak or write any purpose of reproach, slander, defame or contempt of his Majesty's Person, Estate or Government, or tending to the dishonour, hurt or prejudice of his Highness, his Person or Prerogative; or to meddle in the affairs of his Highness, and his Estate present, by-gone, or in time coming; not to deprive his Laws and Acts of Parliament, nor misadvise his proceedings, whereby any mischief may be moved between the King's Majesty, his Nobility and loving Subjects, under the pain of losing their lives, lands and goods, and others then contained. As also all hevers of any such leaguings, confederations, degrees or qualities, shall be punishable as Traitors, and their speeches or words, and counsels thereof, without apprehending of the Author (if it be in their power), and reveal not the same to his Majesty, or some of his Judges or Officers, and are mentioned in the said Acts, are liable to the like punishment, as the principal offenders.

Likewise by the 15th Act of the 11th Parliament of King James VI. it is statute and ordained, that none of his Majesty's Lieges and Subjects do presume or take upon him to impugn the Dignity and Authority of the Estates of Parliament; or to speak or procure the innovation or diminution of the power and authority of the same, under the pain of Treason.

Likewise by the last Act of the 3d Parliament of King James V. and by the 33d Act of the 6th Parliament of King James VI. all burning of houses or corn, and willful fire-raising, is declared Treason, and the commensures thereof are to be punished.

Likewise by the 5th Act of the 11th Parliament of King James VI. it is statute and ordained, that the murder and slaughter of whatsoever his Majesty's Lieges, where the party slain is under the trust, credit, assurance and power of the flaps, all such murder and slaughter shall be Treason, and the persons found culpable shall forfeit life, lands and goods.

Likewise by the 37th Act of the 3d Parliament of King James I. and by the 144th Act of the 12th Parliament of King James VI. all receivers, suppliers, or in-commensures with any Traitors, are punishable by forfeiture, as the Traitors themselves.

Likewise by Common Law and Practice of this Kingdom, all counsellers and aid-receivers of any malicious purpose, of putting any violent hands on the sacred person of your dread Sovereign the King's Majesty, or purpose of killing or putting him to death, and all advisers, counsellers, helpers, shelterers or helpers of any such treason, are punishable as Traitors.

Nevertheless, Vis of Argyll, that you the said Marquis of Argyle, having laid aside all fear of God, loyalty to his Majesty, and to his royal Father, of ever blessed memory, natural duty and affection to your native Country and Countrymen, and respect and obedience to the Laws of all well-governed Kingdoms, the Common Law, and the Laws, Statutes, Acts of Parliament, and Practice of this Kingdom, and having traitorously intended and executed the execution and subverting the fundamental Government of this Kingdom, the Sovereign Authority, royal Prerogative of his Majesty, and Privilege of the Crown: You, for carrying on of your said wicked purpose, having gathered and convoked together, in a hostile manner, a great many of your Friends, Servants, Vassals, Followers and other of his Majesty's Lieges, without any warrant, licence or command from his Majesty, and therewith, under pretence of opposing such as by

you were then nick-named Anti-Covenanters, and opposing the work of Reformation (that you indeed were faithful adherents of his Majesty's lawful Authority), having marched to the ford of Lorn in Argyll, in the month of June, 1644, there did, in your town, and in presence of a great many Gentlemen and others publicly declare, That it was the opinion and judgment of many Doctors and Lawyers, that a King may be deposed for deformity, weakness and impotence: And that howbeit that your words were as abominable from any King, yet that the sense and meaning thereof might appear to be of the then King's Majesty, your dread Sovereign, you did halcyon and cry to the late Mr. John Stewart, of Leith, And, Mr. John, you understand Latin.

Likewise considering the condition of the Kingdom, and the oppositions that a great many of the people were in to his Majesty, particularly you the said Marquis, and your three Councillors and Followers; it is clear that the said words did not only traitorously reflect upon Kingly Government, as being subject to the people, who might in the case aforesaid depose a King, but also it is clear, that your meaning also and intention thereby was, that the King's Majesty, your dread Sovereign, might be so deposed: And the said treasonable speeches were so moved by you, of design to offer in your many treasonable actions and practices done by you unto his sacred Person, Dignity, and Authority; which, doubtless, did occasion, and was mainly instrumental both in his deposition and cruel murder: Which wicked and treasonable speeches the said Mr. John having thereafter repeated, you most cruelly and tyrannously did persecute him to death, as a Leisling-maker between the King's Majesty and his good Subjects, howbeit you could not but be conscious of the truth of what he had reported.

In prosecution of your aforesaid wicked and treasonable purposes, you have marched with the said force to the house of Arden, belonging to his Majesty's right truly and well beloved Cousin and chief Councillor John Earl of Arden, which was then kept for his Majesty's service and authority, after you had forced the mansion of the said house, and destroyed the woods and plantings of the same, and worried and destroyed the said Earl's friends and tenants, his Majesty's good Subjects, you did fight and demolish the said house; and to execute your hatred to the said Earl, merely for his loyalty to his Majesty, did force, or by force under you did force upon the house of Arden in Glasgow belonging also to the said Earl, and without any colour or pretence of offence did wilfully, most traitorously, and contrary to the sacred Acts of Parliament, raise fire in the said house, and thereby burnt and destroyed the same, and all furniture therein.

Thirdly, In further prosecution of your treasonable plots and machinations against his Majesty's Person and Authority, contrary to the aforesaid Laws and Acts of Parliament as aforesaid; you, as an hostile manner, did most traitorously lay siege to his Majesty's Fort and Castle of Dunbar, then fortified and kept for his Majesty's service by Col. Henderson, having his Majesty's command and commission for that effect, and forced the said Colonel to render the said Castle to you; out of which most traitorously you caused to be transported and carried away a great many of his Majesty's cannon and other armaments, appointed for defence and security of the said Castle.

Fourthly, Nevertheless, considering that his then Majesty had in June 1641 come himself in person to this Kingdom, and most graciously condescended to such Acts as were required of him (how unjust soever) for security and pleasing the people, and settling a peace; and that he had put on an Act of Oblivion, to remission all such as had formerly been in opposition to his Majesty within this Kingdom, and that he had conferred upon you the title and dignity of Marquis, as a mark of his royal favour, and set you in places of greatest trust in the Kingdom; and that you had taken and promised, in the Abbey of Holyrood, that in case any trouble or commotion should happen to be raised in England, by any of his discontented Subjects against him, you would aid and defend him against all such, on the hazard of your life and fortune; and that his Majesty had parted from this his ancient Kingdom, as was said and acknowledged by all, a contented Prince from a creature of People; yet nevertheless his Majesty being forced and necessitated in June 1642, to leave his Parliament in England then sitting at Westminster, and his royal Palace of Whitehall, and take himself to defensive arms, for maintenance of his royal person, dignity and authority, and to protect the same against an army of Seceders, who maliciously, traitorously, cruelly and traitorously did invade the same, you, contrary to your allegiance, obligations and recent Promise aforesaid, did by yourself and complices, to tempt and strengthen the said Rebels and Seceders, and in direct opposition to his Majesty's person and dignity, call, or cause to be called a pretended convention of Estates in June 1642, without any shadow or colour of lawful authority; and you and they so convoked did take upon you the supreme authority of the Kingdom, enter in league with his Majesty's enemies, impose subsidies and taxes upon the people, and raise an army of his Majesty's own subjects, and therewith entered his Majesty's Kingdom of England, seized upon his Majesty's Towns and Forts there; and killed, murdered, plundered and destroyed his good Subjects, and in open and pitched battles fought for, with and in behalf of the

* This is called The Grand Indictment of High-Treason, because there was neither Charge exhibited against the Marquis, at the instance of Sir James Lindsay; and there were no protest nor answer made by the Marquis to the Grand Indictment, which indictment Proceedings are referred to in the following, Vol. II. page 427. to page 431, and page 434, and page 435, is inserted Bishop Burnet's Account of his Trial, which is a mean of this Trial being inserted; not of that Indictment against the Marquis at the instance of Sir John Lindsay. And in page 435, is inserted the Marquis's speech on the scaffold, for which reason it is here omitted.

aid Rebels, against his Majesty's forces, which in effect was the life and soul of all our subsequent troubles and disasters that befall his Majesty or his loyal and good Subjects thereafter.

Fifthly, In June 1645, after your return from England, to these your implacable malice and hatred to all such as had any dependence upon, or affection to his Majesty, you by yourself, and others under your command, or at your direction, did most treacherously raise wild fire, and burn the house of Millicent Egmont, inhabited by the Countess of Derby, and in her possession, and all the moveables and furniture, they extending to a great value; notwithstanding that the said Countess was an honorable aged woman; and who, and her dear husband, the Earl of Derby, by all observances and dutiful respects obliged you, so far as in them lay, thereby adding to the said Act of Treason, the height of oppression and ingratitude. Lastly, In the year 1646, you by yourself, or those under your command, or for whom you were accountable, or whom you might have helped or impeded, did take in the house of Yeward, belonging to the Laird of Salmond, and the house of Ogle, belonging to the Laird of Ogle, and after articles of capitulation drawn and submitted by the Laird of *Abingdon*, and other Officers under your command, did most treacherously, in manner aforesaid, under trust and assurance, as it is said, burn the said house of Ogle, cruelly hang, kill and murder a great many of the said Lairds of Salmond and Ogle's friends and followers; as is more fully exprest in the Summons read at their infiance and moine, for his Majesty's interest against you, and which is repeated in a part of this article.

Secondly, You having cruelly intended the utter ruin and extirpation of all loyal and loyal Subjects, who had given testimony of their faithfulness to his Majesty's dear Father, of ever-blessed memory, and having with an army of your complices, allies, ruffians, servants, tenants and followers in June 1646, marched to *Kenilworth*, where a great many of his Majesty's well-affected Subjects of the name of *Mac-Daniel*, *Mac-Cru*, and others, whose names are not particularly known, to the number of 400, had fortified themselves for their security, and against your oppression and violence, in the house of *Lambard* and *Denmarke*: And you with the said forces having marched to the said house of *Lambard*, the Gentlemen and others therein, without making the least opposition, and declaring that they had refused themselves to the said place for shelter and protection, did reader up the said house and themselves, upon assurance, that they might rest and quietly return and live at their own houses, according thereto, they were surprised and sent home, where they remained in peaceable manner by the space of days. Notwithstanding, thereafter, you and the forces of malice having besieged the Castle of *Denmarke*, during the said siege, there were several *messengers* appointed for the said Gentlemen to make their appearance, (which frequently they did, and were still dismissed, until) such time as those who were within the said house of *Denmarke* had rendered up the said house and themselves, to be disposed of at the mercy of the Kingdom, or pretended Committee of Estates. And that notwithstanding thereof, you and your said complices who most perfidiously, treacherously and treasonably (and for which also you are here indicted) hanged and murdered, or caused to be hanged and murdered, the number of 260 of them or 300, they being under your trust, assurance, credit, or power; and did divide the rest of them at your own hand, without any lawful war, sent to *Capitain Wilson* *Hay*, and *Archibald Campbell*, to force in the French war. Then and thereafter you caused, and appointed a new rendezvous of the said Gentlemen, who were in the house of *Lambard*, and their followers, who having appeared in frequent manner, you caused to be sought out fifteen or sixteen of the said Gentlemen, who were that night first to the said house of *Lambard*, and the next morning brought forth by you, or such as were under your command, and most perfidiously, cruelly and inhumanly, without any order of Law, or form of Process civil or military, hanged and murdered. And to aggravate the said cruel and barbarous crime, 'tis of verity, That one of the said Persons being an old man, and having one son, of age not above fifteen or seventeen years; the father immediately before his death did depose, that his said son had never done any crime offensive to his life-time, but that he had still been at Schools; and that some few days before, he had come from *Glasgow*, the place of his education, to visit his Parents; and therefore did earnestly supplicate, in regard of his innocency, his life might be spared: Notwithstanding you, and the bloody orders of your purples, were so unmerciful, so set to hearken to the said son, that the said young old man, but forthwith the said young innocent boy was cruelly also hanged to death. Likewise not content with the above said unheard-of brutal Acts of cruelty, you in the month of August, or one or other of the months thereof, by yourself and followers, or such whom you might have sought or left, caused to be transported from the Isle of *Isle*, to the Isle of *Isle*, to the number of two hundred persons of all ages and ages; where at present of your school and education house withdrawn from them, they in a most miserable manner were pined and starved to death by famine, except some very few, who had out-lived the rest, and were relieved and carried out of the said Isle by boats accidentally coming by: Likewise the person of *Mac-Daniel*, alias *Gordon Galtiey*, or *Conchittie*, being in *disce* ordered by the Parliament, or Committee of Estates thereof, to have been brought from prison out of the house of *where he then was*, and there had been kept by you and others in your time, many years before, to *Edinburgh*, that the cause for which he had been kept, and so detained in prison, might have been known, and he having for that end been brought in a ship the length of the road of *Lamb*, you, for preventing such information of your cruelty and oppression exercised towards him, and many of his friends and followers, which he was able to have given and made out, you, in manifest contempt and scorn of that Committee of Parliament, under which you yourself acted, caused to take the person of the said *Gordon Galtiey* forth of the said ship, and after you had carried him to your own lands and bounds, cruelly caused to hang him to death.

Eighthly, Notwithstanding of the manifold acts of mercy and favour, dignity, honour and trust conferred upon you by your then dread Sovereign, for reclaiming you from your disloyal and treasonable practices, plots and machinations, against his sacred person, dignity and authority; he being fore-pressed and reduced to great straits and extremities by that

army of *Sedaries* before-mentioned, with whom you had formerly joined, as in said, and having in that mixture and difficulty rather chosen, from an innate principle of affection to his Countrymen, to call himself over in the hands of the army of his Majesty's Subjects of his ancient Kingdom of Scotland, for shelter and preservation of his Royal Person; nevertheless, you, the said Marquis, being the chief ring-leader of that factious party, who then swayed the reins and affairs both in Council and Armes in the said Kingdom, did so converse and conspire, and by your influence to prevail, that after all your efforts made by his Majesty, and his earnest desire to have come and lived in Scotland, until such time as all differences in both Kingdoms had been settled: That a pretended Act of Parliament was made for abandoning and leaving his Majesty in the disposal and mercy of the inveterate enemies of his Majesty and Government, the said armies of *Sedaries*. And that you acting as, and according to, the said Act might be the more evident and clear, and to aggravate your content and singular guilt therein, you yourself went to *London*, where you boldly, under pretext of satisfaction for the arrears of the said army, raised by the pretended authority of the pretended Government of Estates, in *June 1643*, as it is said, uncharitably and treacherously gave up, at least consigned to the upholding of your dread Sovereign and Father, and that as being unpowdered to go by the Kingdom of Scotland; and thereby did rub an indelible mark of reproach and infamy upon the whole nation to all generations, so far as in you lay. And further, to clear your affected treasonable dealings, seditions to, and correspondence with that infamous party of the said army, who carried on the said abominable and detestable act, you being at the same time in a pretended joint Government of both Kingdoms, whilest the English therein did call in question whether the said army would sincerely consent with them in their said treason and treachery; you, after many arguments used in their favour, earnestly desired them to have patience for a little time, and it would appear by somewhat of the officers of the army, how far they intended to concur and go along with them. Likewise within few days after there was a vindication and declaration emitted in name of the said armies, whereby it was held forth, that in case his Majesty would not condescend to all the desires of both Kingdoms, which was no less than the dwelling himself of all regal power, civil, ecclesiastical, or military in state, church, or armies, they would deliver him up; which immediately after the payment of 300,000. bailey and unreasonably was done by you and them.

Ninthly, In June 1643, his Majesty's Royal Father being contrary to all Laws, divine and human, most unchristianly, barbarously and treasonably detained and kept prisoner within the Castle of *Carrick*, in the Isle of *Wight*, by a party of *seditions*, disloyal and rebellious *Sedaries*, the Estates of Parliament then convened by his Majesty's authority, having taken the said inhuman, treasonable and cruel siege into serious consideration, they found this Kingdom engaged in honour and duty to resist so bored and unbecomely of cruelty and lifelessness, and obliged to use all such endeavours to relieve him out of the hands of such wicked *Usurpers*, and to restore him to the exercise of his Royal authority in freedom, honour and safety; for effecting thereof, after all other fair ways essayed, upon mature consultation had, they found that the only probable means was the raising of an army of his Majesty's good Subjects, which was accordingly done and ordered by the Act of the said Parliament. Against the carrying on of which, to full, laudable and necessary duty, you did most violently and uncharitably oppose yourself, not only by arguing, voting against, and using all other means in your power to obstruct the same; but also, after the same was put into an Act of Parliament, you did most contemptuously and treasonably publicly dissent from, and enter a Protestation against the same; and not being therewith content, after the said army in pursuance of their duty and allegiance had marched into the said Kingdom, you shortly after in the month of *September* in contempt of the affected authority, and against the preservation of his Majesty's person and authority, did most treacherously convocate an army of *seditions*, factious and rebellious Subjects, in opposition to the said army, and therewith committed divers and sundry outrages, murders, slaughter, plunder and outrages upon the persons and estates of divers of his Majesty's good Subjects, and therewith invaded several of the cities and castles, seized thereupon, and upon the magazine with arms and ammunition therein: And at that time the said rebellious army of *Sedaries* of England, being upon the borders, you fearing and apprehending that the force and power raised by you should not be able to withstand his Majesty's good and loyal Subjects who were then risen and ready to rise in arms for affording and vindicating his Majesty's just authority, you did most boldly, treacherously and unreasonably call in to your aid and assistance the said armies of *Sedaries*. Likewise you yourself went in person to the house of *Edinburgh*, within a mile of the *Edinburgh* borders, to the end of *Edinburgh*; and you did meet with the vile *Usurper* *James*, the sixth, commander of the said army, with whom you had several private meetings and consultations, and thereby persuaded, and prevailed with the said Traitor, that he thereafter marched with the said army to *Edinburgh* and the places thereabout; and which march and coming of the said *Usurper* you might have undoubtedly hindered, in so far as it can be made appear by clear proof and testimonies of famous persons, That it having been complained upon to him at the said house of *Edinburgh*, that by reason of his being there with such a great number of Soldiers, the Lord *Madrigal*'s tenants would undoubtedly be ruined; he the said *Usurper* did answer, That he could not help the same, for his staying and going did depend upon you, and that he was ready, if you desired, to march back to *Edinburgh*. As lastly, you did converse, advise or consent to the raising and convoking of the said factious, factious, and rebellious armies; at least was one of the number thereof, and with, and assisting to them in arms; at least, did vote, counsel or persuade the re-calling of the said army of *Sedaries*: And they being brought in, you did countenance, assist, encourage and consult with them, or their Commanders, or some of them, in public or in private at *Edinburgh*, and in the *Countess*, in the house called *Lord How's Lodgings*, and in divers other places. As also, you did most villainously and traitorously counsel, exhort or vote for the drawing up of a Letter directed to the Traitor and abominable *Usurper*, wherein you and your complices did engage yourselves, in the name of

of the Kingdom of Scotland, to employ your utmost endeavours, that none who have been active in, or contrary to the engagement against the said Scotland, or had been in arms at Stirling, or elsewhere, in maintenance or furtherance of that engagement, should be employed in any public place or trust within this Kingdom whatsoever, without advice or consent of the Kingdom of England, as the said Letter, dated the 6th day of October, 1648, more fully bears. As also, you did draw up, at least did counsel, advise or vote, to the up-drawing of certain Instructions given to Sir John Gifford, who was sent by you and your complices, as Commissioners to the pretended House of Parliament of England, dated October 17, the year aforesaid; wherein you desire, that the noblemen, gentlemen of quality, and considerable officers of the army, that went into England, under the command of Duke Hamilton, and who were then prisoners, might be kept as pledges for the peace of this Kingdom; by which not only have you endeavoured most unreasonably to enslave your fellow-subjects and countrymen to the power of strangers, but most treacherously and treasonably, as an unworthy, ungrateful Patriot, done what in you lay to destroy the life of your own dear Sovereign, and the Royal Authority in him and his succession, and to subject the honour, liberty, power and government of this his Majesty's ancient and free Kingdom, to the command, rule and tyranny of foreign visitors and usurpers. As also, you, upon the 4th day of May thereafter, having taken upon you most reasonably the supreme authority of this Kingdom, gave warrant under your hand for issuing out a Proclamation, declaring that the wives, children and families of James Lord Ogilvy, Lord Kils, Lord Marquis of Huntly, then deceased, Lord Gordon, son to the Marquis of Huntly, John now Lord of Melrose, therein defendant, John Middleton of Huntly, deceased, and General-Major, should be no longer under the protection of this Kingdom, and that each couple should be taken for transporting them out of their country to foreign parts, as the Estates of Parliament, or their Committee, should think fit.

Tenethly, After his Majesty's dear and most loyal father, of eternal and most blessed memory, had been most uncharitably, inhumanly, horribly and barbarously murdered, by the said abominable traitor and usurper Oliver Cromwell, and his wicked complices, the devilish and treasonable counsels, plots, contrivings and doings of yours did not yet terminate: For there being some motions for advice to be made to his Majesty, by some of his good subjects of this his ancient Kingdom, as unto the lawful and rightful Successor to his deceased royal father in the temporal crown thereof, that his Majesty might come to his said ancient Kingdom, for exercising his royal power and authority, the said motion and purpose being so just and lawful, you, notwithstanding of your great impudence and daring, always fearing, that a direct opposing thereof would prove altogether ineffectual; you, in a most indirect way, procured the application made for seeking his Majesty, to be clogged with limitations, restrictions and conditions, to have been conceded to by his Majesty, before his admission to the exercise of his royal Government, as were most detrimental to his Majesty's dignity and authority, and most derogatory to monarchical Government; as are more fully expressed in the several commissions, instructions and advices sent and made to his Majesty in this effect, and public proclamation of his Majesty at the Mercat-cross at Edinburgh, by you and your complices, commissioners at Scots, all which are here repeated as a part of the Libel, *brevevis capite*. And his Majesty, upon consideration, that the said unreasonable, unlawful and treasonable conditions were exacted of his Majesty by you, and a few number of infamous subjects, who had, by the assistance of the usurper and tyrant Oliver Cromwell, thrust yourself into the government of his Majesty's ancient Kingdom; and trifling to the fidelity, the loyalty and good affections of his other good subjects, having, notwithstanding the said hard and unjust conditions, resolved to call himself upon the loyalty and affections of his other good and faithful subjects; you, to obstruct his Majesty's purpose and resolution, and to lay, as in you lay, to fight and ventur in thereby, did most cruelly and unreasonably exact of the Marquis of Argyll, his Majesty's commissioner, and who represented his person in his said ancient Kingdom; exalted to be most horribly and inhumanly murdered the said Marquis, at the Mercat-cross, upon the 21st day of May, 1650, with all the circumstances of disgrace and dishonour; which so much reflected upon his Majesty's person, dignity and authority, and upon the honour of all true nobility; and is so recent and fresh, with detestation, in the memories of all good subjects and generous spirits, at home and abroad, that it is not fit to be mentioned or repeated here. But his Majesty still continuing in his former purpose and resolution, and after a most tedious and dangerous voyage at sea, having, by the providence of Almighty God, happily and safely arrived in his said ancient Kingdom; shortly thereafter, the most bloody murder of the said usurper Oliver Cromwell, in furtherance of his Majesty, with a powerful army of Soldiers, by sea and land, invaded his said Majesty's ancient Kingdom. For opposing of whom, an army being raised, while both the said armies were in the field, you most treacherously and unreasonably kept correspondence, and had intelligence with the said usurper, by writing in, and receiving letters from him, without his Majesty's private consent or warrant; at least, by sending to, and receiving messages from him by word of mouth. And further, to advance the designs of that abominable Regicide, after you had by your indirect means, plots, advices or contrivances, gotten his Majesty removed from his army at Leith, you by your assistance gave a few number of the Commissioners at the General Assembly, yourself being one of the number then met at St. Colville's church, commonly called the West-Kirk, prevailed so, that by the working of the hands of friends, and by agitating the emotions, there was in a most clandestine and surreptitious manner an Act, as of the said commission of the Kirk, made, passed and published, wherein, besides many reproachful and slanderous expressions of his Majesty and his royal ancestors, more fully expressed in the said pretended Act, bearing date August 13, 1650, it was declared, that you defrauded, and would not own his Majesty's interest, because of his refusal to subscribe and emit a declaration offered to him; and which declaration was contrived and drawn up by you, and contains many scandalous, seditious, impious, reproachful and treasonable expressions, not only against his Majesty's

authority and government, but also against his royal father and mother, and others his royal progenitors, as is more at large expressed in the aforesaid Act of the date above-written, an declaration bearing date the same day. The same year; of which declaration there needs no more be said, than that the circumstances by which his Majesty was enforced to sign the same, are enough known to the world; and that the worst and greatest part of his Majesty's ancient Kingdom did even detest and abhor the evil usage of his Majesty in that particular, when the same tyranny was exercised there by the power of you and a few evil men your complices, which at that time had spread itself over his Majesty's Kingdom of England; at least you and your complices did ratify and approve the said Act of the West-Kirk, and confirm therein; and at least you did deal with, and press and force his Majesty to sign and subscribe the declaration aforesaid; at least you were author or contriver, adviser or counsellor, persuader or voter, or adviser, adviser, aider or abettor of the aforesaid rebellions, limitations and conditions, and of the aforesaid murder of his said Majesty's Commissioner, and manner thereof, and of the keeping of the said correspondence with the said invader and usurper, and of the said Act and Declaration, or any or other of them, or all or part thereof, or any or other of them.

Eleventhly, After it had pleased God to suffer that monster of men and cruel Regicide, Oliver Cromwell, to rise to prevail against all his Majesty's endeavours for recovering his just right and interest in this and in his other Kingdoms, and over all the armies and forces raised by him for that end, so that he was necessitated to relinquish himself with his sons, Princes and Estates; however, at his Majesty's coronation, you, in the presence of God, and a great many of the Nobility of this Kingdom, and others his then convened at Scots, the 11th of January, 1651, did swear to be faithful to the Crown, and true liege-men to his Majesty; yet nevertheless, contrary to the said oath, and notwithstanding the many favours, honours, benefits and Acts of indemnity conferred upon you, and contrary to the Laws and Acts of Parliament, as is expressed, you did most perfidiously, ungratefully and treasonably, in some 1653, or 1654, not only according to your bounden duty, not rite in arms, and you with the Earls of Glencairn and Middleton, who were commissioned from his Majesty for hindering the further progress of the usurper, and expelling them forth of this Kingdom; but did in open hostility join with the said usurper, against his Majesty, especially with the Colonels Juxon, Gellie and Tynnesley, at least with the Colonels Collier and Tynnesley, at least with Colonel Tynnesley, when he was in the Highlands in opposition to the said Earl of Glencairn; at least joined with one or other of them as counsel; did take and relieve prisoners, did furnish several pieces of great cannon, to the number of fourteen, in some 1653, or 1654, to Colonel David, then governor of Argyll, which cannon, or a great many of them, were taken out by you of his Majesty's castle of Dunbarton, at the time and in the manner above expressed. And likewise you did take pay from the said usurper for a company of foot under them and in their service, thereby openly and clearly making it appear what you did intend by all your more covert and private machinations, plottings and treasonable designs against his Majesty's dear father and himself. Likewise to make it appear what intemperance and power you had with the usurper, you not only did term and call the soldiers of his Majesty's forces against you and the usurper, rebellious, but also you in some 1654, did take upon you power to bring off such as were in that service, and to give remissions therefore under your own hand; particularly to John Mac-Douglass of Dunblair, as the same under your hand, the said Year, will verify.

Twelfthly, I beseech Oliver Cromwell, that monster of men, vilest of traitors, most cruel murderer, bloody tyrant and usurper, having reached, as he thought, the end of all his devilish plots and treasonable machinations, by usurping the common and authority of his Majesty's three Kingdoms, and setting the same, so far as in him lay, upon him and his family; you concerning the same so fast and reviled, that in human probability it was not likely to be removed or altered; that you might avow and reap the fruits of your former more covert, vile and damnable plots, tricks, contrivings and doings for the said arch-tyrant and traitor, you then pulled off and laid aside the mask of pretended loyalty and religion, under which you had all along falsely looked, thereby having deceived and cheated a great many of his Majesty's good subjects from their due allegiance and loyalty under hypocritical false pretences of your affection and zeal for Religion, Prince, and Country, to the utter ruin (if not of souls) of many of their bodies, estates and fortunes; and did openly, in face of the world, discover yourself in your own colours, appearing in a thing professedly and publicly in behalf of the said usurper against his Majesty's person and authority, in so far as in the month of May, after the decease of the said usurper, the famous good usurper, his son, being most reasonably and tyrannically proclaimed King of Scots, and sole Pretender of his said Majesty's dominions and territories therein belonging, at the Mercat-cross of his Majesty's cities of Edinburgh and Dunbarton, you having apparently, for such like services done or to be done, received from the said usurper Oliver some precepts due unto the Exchequer of Scotland, for payment to you of 12,000 sterling, or thereabout, did with your personal presence countenance the said tyrannical and treasonable proclamation; thereby, so far as in you lay, disavowing his Majesty's just and royal interest and right, and establishing the same on the persons and families of the said usurper. Likewise not long after the said usurper, the more to establish himself in his usurped government, having called a pretended Parliament, consisting of a few seditious, ill-reputed House of Burs, and certain persons of his Majesty's three Kingdoms as a House of Commons, to be called the Right-mayor; you did procure yourself elected Commissioner for the shire of Argyll, at least did accept of a commission from them; albeit both by the ability of your birth, and your non-residence within the said shire, you was in law incapable to be so elected; at least ought and might have refused to accept any commission. Nevertheless having voluntarily, and of your own accord, embraced the said charge and employment, you thereupon took journey, and went to London, and most boldly, perfidiously and treasonably, false, voted, and otherwise acted in the said usurper's pretended Parliament, by whom his Majesty's right and interest was defrauded and abused, and the same owned only in the usurper's

Uffers's Person as a Member of the said parliament House of Commons, to the high Indignity and Contumacy of his Majesty's sacred Person and Authority, the utter Destruction of monarchical Government, the Disfranchisement of this Kingdom, and the great Opprobrium of your own Family and Potency.

Whereunto, You the said Marquis, to make it further appear to the World, that it was always your Purpose and Intention to destroy his Majesty's Authority and Government, and to oppose his Reformation to his just Rights and Laws, to his three Kingdoms, at a provincial Assembly held at January a little after the Death of his Majesty's Army at Wexford, the Marquis praying for his Majesty upon the accustomed Manner, you did most villanously and treacherously exhibit them, saying, That they were but Words to pray for a malignant and wicked King, whom God had rejected, and would never restore him again; or some to-like Words to that Purpose. And also, you being at London, in the Time of the Uffers's Oath, you said in Presence of divers Persons of Quality, That you wondered how People could be so mad, as to set a Family whom God had rejected, or such Words to that Purpose. Likewise after your home-coming to Scotland, you, openly in a publick Meeting at James Macgillivray's, in Ridley's Widow, in Presence of several Noblemen and Gentlemen, you boasted, That you would soon say any thing you had done in their things by-gone; and that if it were to be so, you would do it again; thereby you did evince that all that said, would be done again. Thereby you expressly taking upon you, by outward Speech, to give Judgment upon the hidden and secret Counsels and Determinations of Almighty God, and thereby to alienate the Affections, Duties, and Allegiances of his Majesty's good Subjects, and to breed and confirm enmities, such as are otherwise dispensed in their wicked Courses towards his Majesty's Person and Authority.

Lastly, That your nobleness and execrable Treason may appear to all the World, it is of Vexat, that in the Year 1648, at a private Conference between you, Oliver Cromwell, and Col. Braden, the said Oliver complaining of the many Difficulties, that attended their Affairs, by reason of the divers Designs which his Majesty had as Foot men came to time against them; you the said Marquis made Answer, That their Danger was great indeed, in regard that if any of their Design should take effect, they were all ruined. And thereupon gave your private Advice, that they should proceed to the questioning of the King for his Life; assuring them, that they could never be safe until they had taken away his Majesty's Life. At which, you did know of the horrible and treacherous Design of murdering his Majesty; and did most treacherously conceal, and not reveal the same till after the said horrid Deed was committed, and so past Prevention or Remedy. At which time, it was 1649, publicly in the Face of the pretended Parliament then sitting, you said, that the Uffers's Council had told you, That England and Scotland would never be at Peace, until the King were put to Death. By all which Particulars respectively, above rehearsed, it is clearly evinced, that you were, and are Author, Contriver, Deviler, Counsellor, Adviser, of all or Part of all the aforesaid Crimes of Treason, and other above related, or other of them, in Manner above declared. And thereby has incurred the Punts and Punishment of High-Treason, and others contained in the Laws and Acts of Parliament above-written; which must and should be inflicted upon you with all Rigour, in Example to others in all time coming.

His Majesty's, To Fletcher.

31 January, 1661.

Ordered, That the above-written Discy be given to the Marquis of Argyle, by a Herald or Parliament, and be to answer thereto, upon the 13th Day of February next to come.

The Marquis of Argyle's Petition to the Parliament of Scotland, craving a Recognition of his Case, containing many weighty Reasons urging the Necessity thereof. Presented to the Parliament, February 12, 1661.

To my Lord Commissioner his Grace, and Honourable Estates of Parliament,

The humble Petition of Archibald Marquis of Argyle,

humbly sheweth,

THAT for as much as the Petitioner can with a safe Conscience affirm, and solemnly protest, That whenever his Allegiance or Accession has been in relation to publick Business since the Beginning of the Troubles, till his Majesty's Departure hence in the Year 1657, though he will not purge himself of Errors, Failings, and Mistakes, both in Judgment and Practice, incident to human Frailty, and common to him, if not with the whole, at least with the greatest Part of the Nation; yet in one thing, though he were to die, he would still avouch, and retain his Innocency, that he never intended any thing treacherously, out of any malicious Design against his Majesty's late Royal Father or Government; or that he present Majesty (whom God may long preserve), their Persons or Government; but endeavoured always to his utmost for settling the Difference between their Majesties and the People. And as to any Accusings before the Year 1649, or from the said Year, till his Majesty being in the Parliament at Perth and Sterling, your Petitioner did with a full Assurance rely upon his gracious Majesty, and his Royal Father, their Trust, Approbation, Oblivion, and Indemnity, for what was past, and most freely believed that the same should never have risen in Judgment, or that the Petitioner should have been drawn in question thereunto. And during his Majesty's Absence, and being forced from the Exercise of his Royal Government by the late Uffers's, and long after that the Nation, by their Depots, had accepted of their Authority and Government, and they in Possession, the Petitioner was forced to Capitulation with them, being in their Hands, and under Sickness, and the same was, after all Endeavours used, according to the Duty of a good Subject; and upon the Petitioner's Part, is innocent and necessary for Self-preservation, without the least Intention, Addition, or Effect to his Majesty's Persecution: That albeit upon Misinformation (as the Petitioner humbly conceives) his Allegiance and Compliance both in their Designs and Quality

have been mis-represented, as particularly singular and personal, staining the Petitioner as a degree of guilt beyond others, and incapable of pardon; the same base is far prevailed upon his Majesty, as to cloud and damp the propitious and comfortable rays of his Royal Grace and Favour, and have stained his gracious inclination beyond an natural disposition of clemency express'd to his other Subjects, to commit the Petitioner's person, and give way to the trial of his enmities and afflings: Yet to firmly rooted is the Petitioner's persuasion of his Majesty's Justice and Clemency, and that he intends the reclaiming, and not the ruin of the menarch of his Subjects, who retain their loyalty, duty, and good affection to his Person and Government; that upon true and right consideration of the Petitioner's carriage and steps, he shall be able to vindicate himself of these aspersions, and shall give his Majesty Satisfaction; at least so far to extricate his guilt, as may render him in all object of that Royal Clemency, which is of that depth, that having swallowed and pass by, not only personal but national guiltiness, of much more a deeper dye than any the Petitioner can be charged with, or made out against him; and so will not strain to pass by and pardon the faults and failings of a person, who never acted but in a publick right way, without any sinister or treacherous design against his Majesty or his Royal Father; and against which he can defend himself either by acts of approbation and obvious in words, principles, which he conceives to be the supreme, sacred, and invaluable security, or which he was forced to, much against his inclination, by an indisputable necessity. And albeit his Majesty's grace and favour is usually tryed to no other rule but his royal will and pleasure; yet his Majesty's is innate, essential, and inseparable a quality of his royal nature, that the Petitioner is persuaded in all human certainty, that the leaving and committing to his Parliament (as is express'd in his Majesty's Declaration of Oath 12th last by-past) the trying and judging of the enmities of his Subjects during the late troubles, as indeed it is in its own nature, and ought to be accepted of all, as an undoubted evidence of his Majesty's affection to, and confidence in his people; so no other trial or judging is therein intended, but a fair, full, legal and usual Trial, without any prejudice, passion, or premeditation, or preception; like as by the said Declaration there was a freedom for all the people interited, to make their application to the Parliament, or in the mean time to the Committee, from whom only his Majesty is pleased to declare he would receive address and information. And being it was the Petitioner's misfortune, during the sitting of the said Committee, to be prisoner in England; whereas if he had been prisoner here in Scotland, he would have made application to them, and would have craved, and in justice expected that preception might have been taken by them, to whom the preparing and ordering of that affair (to wit, against the Trial of the Subjects carriage during the troubles) was recommended, that the Petitioner's absence, which was his misfortune, not his fault, may not be prejudicial, being the Petitioner has lately received two several Dunters, whereas there be many crimes guilty field, with all the aspersions and aggravations imaginable laid to his charge; importing no less than the loss of his life, name, and estate, and the ruin of him and his posterity; which he is confident is not intended by his Majesty. And that by the Law and Practice of this Kingdom, consistent to all reason and equity, the Petitioner ought to have upon his desire a preception, for taking the deposition of certain persons, which being frequently and usually granted in this country, when any person is detained for any crime, and therefore innocence before he was brought to a Trial, at his desire, preception was taken in all business relating thereto; which the Petitioner in all humility conceives, ought much more not to be denied to him, not only by reason of respect to his quality, and of the importance and consequences thereof to all his Majesty's Subjects of all quality in all time coming; but also in regard it has been so granted and intended by his Majesty's Declaration aforesaid; like as the manner of the crimes objected, being always in times of wars and troubles, the guilt thereof was not personal and particular, but rather national and universal, and veiled and covered with a sort of indempnity and oblivion; and so tender and ticklish, that if duly considered, after a hearing allowed to the Petitioner, in prudence and policy, will not be found expedient to be tried in public, or touched with every band, but rather to be precepted upon by some wife, sober, noble, and judicious persons, for their several other labours in the paper before annexed. Nor does the Petitioner desire the same without antecedents, nor needs the same breed any longer delay; nor is it fought among an end of all to his Majesty's power, and vindication of the Parliament's innocency, as to many particulars where-with he is aspersed; and it would be seriously considered, that *certum Confessio nullis longis agit equat de vicio hominis*, far less can this small delay, which is usual, and to this case most expedient, if not absolutely necessary, be refused, *ne agitur sine filium de vicio, sed de fama*, and of all worldly concerns that can be dear or of value to any man.

Upon consideration of the premises, it is humbly craved, That your Grace, and the Honourable Estates of Parliament, may grant the Petitioner's desire, and to give Warrant to this purpose to depend before your Grace, and the Estates of Parliament, upon such interrogatories as your Petitioner shall give in, for clearing of several things concerning his intention and loyalty during the troubles. And for such as are out of the Country, and Strangers, residents in England, Committee may be directed to fetch as your Grace and the Parliament shall think fit, to take their depositions upon Oath, and to return the same.

And your Petitioner shall ever pray, &c.

Edinburgh, February 12, 1661.

This Petition being read, was refused:

Edinburgh, at the Parliament-House, February 13, 1661.

THE Marquis of Argyle (being accused of High-Treason, at the instance of Sir John Flecker, his Majesty's Advocate for his late Majesty) was brought to the Bar. His Lordship humbly desired but to speak a few words before reading the indictment; assuring to speak nothing in the cause

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any particular quarrel at one another; that in *June 1646*, he and I were fully agreed upon *Article* and *Condition*, contained in a Treaty published by the Gentleman, in yet also who carried the messages both by word and writing between us; and it was neither his fault nor mine that the business did not go at that time, which (as is known to all) proved very disadvantageous to the Kingdom thereafter.

The fifth calumny is concerning my dealing with the *English* after *Windsor* fight. It is well known, my Lord, to many, that myself, and the Gentlemen of *Staffordshire*, *Kent*, *Wiltshire*, and *Trent*, endeavored to bring all the English about them on all hands against the *English* (which they did not prevail in), but was most unhappily made known to the *English* Commanders for the time, which they took so much to be published (as a very notable discovery) in these *Newsbooks*, which disclosed two sad disadvantages to us. For they not only caused our attempts in the instant, but did determine the latter it to be so, and so, whereby two of my Regiments of Foot, (*Lord's* and *Lord's*) and very near the number of one of Horse (and the constant of all the Regiments) were lost to *England*; and when *David* was there at *place* I could not be with a great disorder of sickness (as Dr. *Cartwright*, and many others who were with me, can witness). So, my Lord, I was so put to, when I was violently in these hands, yet contrary to them, which I did absolutely refuse, upon all the hazard of the interest of that nation, as also what I was so determined to do, is therefore ready to be shown, whereby I will commend their *Prudence* upon demand.

I shall, my Lord, add one reason more to clear this (which is many other weighty public reasons and considerations, which I shall further mention at this time), it being most natural to bring them in by way of defence afterwards, in my own interest, and of all Noblemen and Superiors in *England*. It may naturally be presumed, that I had been a very faithful folk, if over I had been for promoting such an Authority and Interest over myself, as I should have, and was so fully determined to in all that difference, myself and other Noblemen, from their own will, which (which may say I was so carried in) yet it being absolutely dangerous to all true Nobility, and my Ancestors and I, as it is said in this history having had to make titles of honor, dignity, and man at place in it, as it is concerned upon by his Majesty's Royal Professors and his Lord's all for our constant Loyalty and Adherence to the Crown on all occasions, as the Records and Histories of this ancient Kingdom have borne, besides the narratives of all our great, and after the just privileges thereof, against all opposition. I did, my Lord, ever (even when the *English* were at the memorable night of *Windsor*) declare my true affection to a Commonwealth Government, which was well known to them all. I was not, my Lord, very dissatisfied, when there were reasons (spread abroad of *Charles*'s being made a King (as some have printed can witness)), for I told them it was a most probable way for *Charles*, and the more it was encouraged, it would tend the more to *Charles*, and their deformed Commonwealth's Government's ruin, and promote his Majesty's full interest in the state. My Lord, I shall not much blame my Lord's Advocate for doing his endeavor, (as being an officer in part of his function to execute) but I would say, that it is very hard measure, that for a man has taken care in many months, in taking pains to prevent as many enemies as his perfections could possibly invite, to vent out the highest notes of clear mind, and being out of his by then for, and collecting all the bad aspects of reason (to give them their genuine term) I may call them a certain sort of the common clothes of the Country, thereby to advise misinformations to all the public actions of both Parliaments and Committees during the late troubles, and with strange and remote informations to adduce all those in the channel of my particular actions, he himself, I say, my Lord, as many smooth, as I have had days to suffer them, being, as exceeding disadvantage. But, my Lord, that's not all; I am likewise extremely troubled, that he labours in that (which is not to draw an obscure veil of perpetual oblivion over all my good services, and especially my faithful and loyal endeavours in relieving of his sacred Majesty in the Crown of this most ancient Kingdom of *England*, and the exercise of his Majesty's royal authority therein; with my cordial endeavours for his Majesty's settlement to the rest of his Dominions also: which his Majesty both knows, and has been pleased often to acknowledge it to have been good service. Yet, and many protest in this honorable House know, that I committed both my zeal and affection to the utmost of my power for his Majesty's service in that particular, which I willingly acknowledge nothing, my Lord, but my duty, whereas I was both by nature, civil, and Christian bound to my Sovereign, and especially such a King, of whom I may say well, (as I have often affirmed) That he is a King in whom the Lord has been pleased to take such pleasure, as to perfect his Majesty with to many superlative degrees of excellency, that will certainly exalt his Majesty's fame, both in our age, and to subsequent posterity, above all the Monarchs in the world. So that, my Lord, we may consequently discover a high demonstration of the Lord's singular beneficence and special providence care for us his Majesty's Subjects, in preserving such a rich blessing as his sacred Majesty, (in whom the happiness of these Nations is wrapped up) under the safe wings of his divine Protection. I may say, even when the extravagant malice of men would have been allowed him up.

After my Lord had ended the discourse (being heard by all very attentively, without any interruptions), thus the Lord Advocate spoke to my Lord Chancellor:

My Lord, what can the Marquis of *Argyle* say to the opposition at *Edinburgh*, in *June 1641*?

The Marquis replied, that he found my Lord Advocate endeavored to bring him to debate the particulars, (which he hoped should be cleared at another more convenient time) and was answering the thing itself, but he said thus:

My Lord Chancellor,

I have (informally only) hinted a little at the main things which I am often charged with, my memory cannot fully reach all, neither will time permit to circumscribe their particulars, which I have only touched in the general; nor is it my purpose at present to fall on the debate of any of

that Libel (not having yet confuted the protest) by reason these Advocates (my Lordships) have pleased to allow me, have not yet all embraced, and the results of my ordinary Advocacy (in whom I had confidence) being admitted as relevant. And these Gentlemen, that have been pleased (in obedience to your Lordship's command) to come here with me, not being much acquainted with matters of this weight, and not having embraced till within these two or three days, so that they are strangers altogether to my case; I shall, therefore, my Lord, humbly desire, that a convenient time may be allowed me, that I may prepare my defence, and I shall (God willing) abundantly clear every particular in that Libel. And also, my Lord, humbly desire, that these other Advocates, who were ordered by your Lordship to assist me, and also the honorable Lords of Articles, who bear testimony, (as I called them formerly), may be allowed to confer and appear for me.

The Marquis's Advocate entered a protestation, that what should happen to escape them in pleading (either by word or writ) for the life, honor, and estate of the said noble Marquis, their client, might not thereafter be avoided to them as disadvantageous; whereas they took no offence.

The Marquis assured my Lord Chancellor, that he knew not of any such protestation to be presented, and that it flowed simply of themselves. Whereupon the Lord Chancellor desired the Marquis and his Advocates to remove, till the House should consider both of my Lord's desire, and the Advocates protestation.

The Marquis and his Advocates being removed, the House (after some small debate) resolved, as to my Lord Marquis's desires, his Lordship should have till the 25th of February to give in his defenses as writ, and ordered Mr. *And* to be one of his Advocates.

As to the Advocates protestation, the House resolved, that they could not be allowed to speak in cases of treason either by word or writ, but upon their pet; only allowed them in the general, as such as in such cases was adjudged to any.

The Marquis and his Advocates being called in, my Lord Chancellor intimated the aforesaid refusal of the House, both in reference to my Lord Marquis, and to the Advocates protestation.

When my Lord Chancellor had done, the Marquis spoke as follows:

My Lord Chancellor, There is one thing that has almost engaged me, against that opposition at *Edinburgh*, that, that my Lord Advocate was speaking of, that it may not stick with any of this honorable Meeting, I shall (most modestly) declare, that after the defeat at *Prigby*, I was desired to come and meet with the Committee of Estates (meaning those who were in the then Engagement), and being come with some of my friends to *Stirling*, fearing no harm, and expecting nothing, I was invaded by Sir *George Adams*, where several of my friends were killed, and myself hardly escaped, which is all that can be said I shall in arms, as may be known.

My Lord, not that I am any ways diffident, but I shall in due time clear every particular of that Libel; yet I am not a little troubled that some who have heard the calumnies therein, may let them have such an impression (being affected with false confidence) as to conceive a possibility, if not a probability of their being true; I shall therefore desire to reach charity from this honorable Meeting, that there be no hard thoughts entertained till I be fully heard.

The Marquis therefore, with the joint concurrence of his Advocates, humbly desired, that the Bill (containing many pungent calumnies) for a prosecution of his process, given to the honorable Lords of Articles, might be read and considered in plain Parliament.

To which my Lord Chancellor replied, that it had been formerly refused at the Articles, and that it would not be granted. So his Lordship was carried back to the Castle.

Edinburgh, March 5, 1661, at the Parliament House.

The Marquis of *Argyle* being called in, gave in a Bill, containing several weighty Reasons, shewing a continuance till the meeting of Parliament tomorrow. The *House* being removed, after long debate it was carried against him by six or seven votes; and his Lordship being called in, my Lord Chancellor said that it was refused, and so desired his Lordship to produce his defenses; whereas he spoke as follows:

My Lord, please your Grace,

MY Lord Chancellor, this business is of very great concernment to me, and not small in the preparation of it to the whole Nation; yet, it may concern many of your Lordships who are sitting here, and your posterity; and therefore I desire to have your Grace (my Lord Commissioner) and the remaining Members of this honorable Meeting, your patience to hear me a few words without prejudice or mis-construction, which any other I can say is under obligation to.

I shall, my Lord, begin with the words of that good King *Henry* (*Henry*), that good King of *France* (after he was come back in peace to *France*) in his instructions to his Judges, he desired them to take heed what they do, for they judge not for men, but for the Lord, who is with them in the judgment.

My Lord, I shall speak another word to many young men, who were either not born, or so young that it is impossible they could know the beginning or such business, which are contained in the Libel against me, (being all that hath been done since the year 1638) so that they might have heard by report what was done, but not why, at upon what grounds; and what some have suffered, but not what they have deserved. Therefore I desire your Lordship's charity, until all the particulars, and several circumstances of every particular be heard, whereby which no man can judge rightly of any action. For as it is well observed by that unaccomplished *Grotius*, that *Argyle* affords, That there is more certainty in the mathematics than morals; for as *Grotius* has it, the mathematics separates forms from matters, as between freight and crested there is no matter; but in morals, even the least circumstances vary the matter, so that they are wont to have something besides them, with such intrudes, that the people is more concerned to this, sometimes to that extreme, so that between that which ought to be done, and that which ought not to be done, is interpreted that which may be done, but is never now so this than to the other extremity, or past, where

that the Pannal has contravened by committing the particular deeds libeled, and to leaving him to great uneasiness. Whereas in all Law, Reason, and form of process, the defendant ought to be certified what Edward Lawe he has contravened, by committing such deeds, that are in a multiplicity of crimes. After proving all the Statutes relating to the same crimes, all the deeds *individually* ought to be libeled, falling under the compass of such Statutes, and thereafter the Acts relating to another indifferent crime ought to be propounded, and the deeds falling under the compass of these Acts *individually* libeled, and then upon the libel, which is so very done, the heartiness in many different Acts accumulated together, for the propounding, and therein all most different facts accumulated together *individually* in the falsefession, not considering on the Acts by them contravened, and therefore the libel is *waeps*, and the defendant ought to be acquitted therefrom.

[illegible]

BEFORE the defender come to his particular answer to the several articles of the defence, to the effect the defender's case, in his answer to the public addressings of this kingdom, during the unhappy troubles till the treaty of *Breda*, and his Majesty's home-courtesy, may be truly rated; it is humbly craved that the Commissioner's Grace and honourable House of Parliament may be pleased to remember, that the Kirk and whole body of this Kingdom entered at first into the national covenant, for defence of religion and his Majesty's person and authority, and mutual defence one of another in maintaining the same; whereas, and in what followed in profane treachery till the treaty with his late Majesty, and Act of oblivion, for down at length and pushed in the 4th Act of the said Parliament, anno 1643, his late Majesty did so far acknowledge and approve their loyalty, that in the seventh article of the said large treaty his Majesty was pleased to appoint, that at the close of this treaty, these said loyalty should be made known to the face of the world, that being in all places particularly in the said churches, that his Majesty's dominions. And in the said Act of pacification and oblivion, it pleased to declare, that their constant loyalty in their intimation and proceedings should not be hereafter called in question, and that whatsoever fell forth in those tumultuous times, whether prejudicial to his Majesty's honour and authority, to the laws and liberty of the church, or the particular interest of the subject, might be buried in perpetual oblivion; and whatever had ensued thereon, no mention should be made thereof in judgment or without: like as that justice for himself and his successors, promises, *verbo Principis, necesse est* come in contrary to the said Statute, not any thing therein contained; but to hold the same firm and stable, and to cause it to be truly observed, and their presents to have the full force and strength of a peaceful and true covenant. Like as thereafter as anno 1643, the league and covenant was entered in with the House of Parliament, upon the ground of the large treaty, by the Church and whole body of this Kingdom, for proving the said ends of the said covenant, for maintenance of Religion, Kirk, and Kingdom; which was thereafter approved by the Parliament, 1644, and fifth Act thereof, and proceeded by laws both within and without the fifth Art. 4, by the authority of divers succeeding Parliaments; church and State going unanimously along together, without any apparent public difference till the year 1648. And even then that Parliament, 1648, so highly homely gave to said league and covenant, that they declare the breaches thereof to be the grounds of their resolutions of that war, Act 4, 7 and 8; and their desires for preventing thereof to be the fulfilling of the same, *Idem*. The necessary qualification required in all with whom they would join either in their armies or committees, is, that they be such who were of known faithfulness to the cause and content in the said Art. 4, and that they would approve, and endeavour to suppress the enemies to the cause and covenant on all hands. And Winding up the whole, that they severed not from the public cause, and content of the national, whole league and covenant, and that they be resolved wholly and conformably to adhere therunto, and to hold the said thereof. So that at that time there was still no difference as to the cause and covenant, any difference being only in the manner, and not in the matter of their proceedings.

Therefore what fears this poor Kingdom was reduced to, by the defeat of that engagement, and how unable it was to make resistance to that English army, who, in prosecution of their victory, came to the borders, and

entered the same, it stood out to all; whereas the whole Kingdom being furnished with ammunition, and in great hazard, it was hard to that juncture of affairs to refuse upon any coarse for procuring the same, or further imminent hazard of the Kingdom. The King upon a Shuram of the Council of Estates appointed by his said Majesty, and so forth, was most desirous to take up, when the same matters were brought before him, the conditions of peace, not being able to resist by force the power and strength of the Nation being broken by the said defeat; and to accept the same upon the usual terms that could be had for the time; which as it was considered upon no other intention, or for any other end but that which they were constrained to by inevitable necessity, so at that time it was generally looked upon as good service, and which at that time was most necessary to evade very great, and otherwise inevitable evils, being other necessary to confederate to their demands at that time, or otherwise to have delivered the persons of all that had professed the said engagements, according to the obedience of the late treaty, together with the facts and strength of the Kingdom. The succeeding Parliament for the time, in the year 1649, and succeeding Parliament, and the proceedings in the year 1649, according to the said treaty, which was thereafter ratified by his said Majesty, and his Parliament at *Perth and Stirling*, and after the royal example of his ever-glorious Father, an act of oblivion was issued, whereby all that might be ground of question was buried in oblivion, and pardoned by a general Act of oblivion, as a most full and ample form.

Thus being the state of public affairs during the time aforesaid, albeit by the full and arduous of the duty, the defender in charged with deeds and public address, coming within the compass of the full approbation and oblivion aforesaid; yet such firm reliance both be of his Majesty's perfidious in his gracious clemency, which does in his royal heart so much abound, that albeit his Majesty by his proclamation, dated the 20th of October last, did command him to be forthwith declared, that he has realized to his Parliament the trial of the earnings of his subjects in Scotland during the late troubles: That the late troubles have only respect to the time during the offender's position, and that trial should be taken during that time of the subject's earnings. The defender in all humility conceiving, that it is no ways to be supposed, that his gracious Majesty did thereby intend to stip up active, or to indicate any new trial of the said offender, except in such manner, as he should be bound to be supported on the basis of his merces, should be submitted to this his ancient Kingdom, to which he has upon all occasions given so many signal and recent testimonials of his sapientissimum know, than they are, and have been to his subjects of his other dominions, to whom, according to his Majesty's declarations, he hath granted a full and free pardon, from which few, and chiefly only the unpardonable murderers of his royal Father, are excepted; for whom, as it is well known, no punishment can be sufficient. And therefore, the defender in all humility conceives the said articles, though libellous, are not to be insisted on.

The solemnity of the oath, both of coronant and league, will be, as the defender hopes, pregnant withproofs to put an end to all controversy, ~~and~~ ^{and} the sincerity of his [as of the Church and Kingdom] their loyal intentions for the maintenance of the person and authority of our dread Sovereign, whereto they were thereby so religiously engaged; and the constant tenor of his acting still by virtue of publick orders and warrants of Parliament, and these Committes, wherein his faithfulness in the execution was also in the like manner approved; and that what he did was for the service of his Majesty, for the publick good, whereto he conceived himself engaged in manner aforesaid. Nor was the defender for committing of these unwarlike civil disorders, as he did witness by his inclination to an accommodation with ~~his~~ ^{his} Majesty, in the year 1645, mentioned after in answer to the tenth article, which albeit fully agreed to between him and the defender, yet he could not obtain the Committee's approbation thereof, which is an evidence, that the defender had not the chief force of Affairs, and was always inclinable to peace, as being secured, like the carrying on an engagement in the year 1648, though he was in difficulties, and in great want of money, the way and manner, upon the grounds and reasons thereafter expressed in answer to the ninth article, doth clearly evince, that he had not the chief force in publick affairs. And what power and success he had in the year 1646, as he did faithfully, according to his best duty, improve the same for removing these differences between his Majesty and his subjects, wherein he was passionately earnest, as shall be made appear in answer to the sixth tenth article. And after his Majesty's coming comming up during his being in the Kingdom, and ever after, all the remedy had in his power, as he did by his Articles of agreement, to remove these differences, he faithfully served his Majesty, and even during his Majesty's absence, did always, and still shall, returne loyal duty and good affection to his person, government, and posterity.

and go wherever there are men, grown up or my judge, who only for the un-
happy and accidental events that are the effects of the corruption of men,
but have not known the counsels and rules which are the two parts of
their things necessary to be known to all who would judge of human actions
right, events being for the most part uncertain, and the worst of events of
times, through the corruption of agents, or other accidental circumstances
following upon the belt of actions, yet had they been intimately ac-
quainted with the grounds, causes, and nature of the actions, and
being, the defender is confident that they would not have been and been
of the same judgment, and would have reversed the proceedings had no nature
of the same judgment, and would have reversed the proceedings had no nature

And now to come to the particular delators to the several points of the subornation, of the delay. And first as to the article of the subornation, among the words alleged, spoken at the ford of Lisse, which are labelled to have been, That it was the opinion and judgment of many lawyers and divines, that a King might be deposed for dejection, vendition, or irreligion; and which is alleged to have been meant by the counsel of the then King's Majesty; and the perjurament adjured for enforcing that to have been the defendant's meaning, are found

which were accordingly kept, not without some difficulty, the inhabitants of the town, by reason of prejudice done to them, being highly incensed against the *Lad Col* and.

As to the part of the said article, anent the transporting of the King's Cannon and Ammunition, not relevant to infer the Conclusion, none of the Acts libelled on concluding against any such fact, the said crime of Treason; and the truth is, the Defendant did never transport any Cannon or Ammunition out of the said Castle, but two Cannons, which the Duke of Richmond, heritable Keeper thereof, gifted to the Defendant, and which he would never have gifted, if they had not been his own, and not the King's. 2. The Defendant ought to be absolved from the said article, and all deeds therein contained, the same having also preceded the said Act of oblivion, in anno 1641.

4. And as to the fourth article of the Dittay, anent the Defendant's calling, or causing to be called a convention of Estates, in anno 1643, entering in league with his Majesty's enemies, employing excise and subsidies on the Kingdom, raising an army, entering England thereunto, fighting for and with the Rebels there; it is answered, That the whole contents of this article of the Dittay are charged personally on the Defendant, to contrary to the notoriety of the matter of the fact known to both Kingdoms, and to his Majesty's Commissioners of Grace, and to the whole Parliament; yea, to the said Parliament, 1644, relating and approving all the Acts that are made prints of this article; that there need no more but propose to the Commons to all, and to repeat out of the said public Law and Act of Parliament, what is therein libelled, to evince that they are not the Defendant's persons; does: but the Commissioners (Commissioners established by his Majesty's) Convention of Estates, and of the whole Church and Kingdoms of Scotland, and approved by Parliament, 1644, in the said 6th Act thereof, Fulleth them in this notoriety, for it is clear by that Act, that the said Convention of Estates was called not by the Defendant, as it is libelled, but by his Majesty's Privy-Council, Commissioners for conferring the Articles of the Treaty therein mentioned, and Commissioners of common burdens, all established by his Majesty's authority in anno 1643, which Commissioners considering that article in the large Treaty, bearing the Kingdom of Scotland therein to be for only the Kingdom, and conformity in Church-Government, as a special means for continuing at peace between the two Kingdoms; in answer thereto his Majesty, with advice of both Houses of Parliament in England, doth declare his approbation of their affection in their desire of having conformity of Church-Government between the Nations; and as the Parliament had already taken to consideration the reformation of Church-Government; so they would proceed therein in due time; and this was one of the main grounds whereupon both Houses entered the said league. (2.) That the calling and entering the League and Covenant, was an Act of that Convention of Estates, not the Defendant's personal act.

(3.) That the League and Covenant was entered in with the two Houses of the Long Parliament, and assistance given to them in fighting with or for their army, or otherwise, which is libelled fighting with Rebels. The point of fact being that charged in opposition to the Dittay, as it is answered, That the said two Members of this article are falsified under none of the Acts of Parliament libelled on in the proposition, there being no Act of Parliament libelled against meetings, bands or leagues in general; or in special betwixt the two Nations or Estates thereof. 3. As to the remaining members of the article, they can no ways be relevant (with all fulmination) except it were qualified, that the two Houses of the Long Parliament, to whom the assistance libelled was given, that they were Enemies and Rebels; but that the Defendant is constant it will not be said, because by his Majesty's Act of Oblivion, 25 April, 1650, his Majesty, after his happy Restoration, declares, that what was acted even against his Majesty, and his Royal Father, by his Subjects in England during these times, therefore shall not be entered in question at all, so much as to the prejudice of their reputation, in manner as length contained in that gracious Act. And how loyal the Long Parliament was, did appear as that the Defender dwelt never attempt anything against his Majesty's person, till they were broken; as also what loyalty the declared Members of that Parliament have (as became them) shewed to his Majesty as his just and glorious Restoration, is known to all Europe, to their eternal commendation and renown: No doubt as from confidence of their oath of duty and allegiance, so of the oath of God wherewith they bound themselves to maintain his Majesty's person, authority and greatness, as well as Religion, in that Covenant. 4. All the fore-said deeds, which are the members of this article, etc. The calling the said Convention of Estates, as being the Act of the fore-said Council and Commissioners, the entering in the League and Covenant, raising of the army for assisting the two Houses of Parliament of England, employing excise, &c. as all being acts of the said Convention of Estates, together with the same Convention of Estates, as all approved by the said 6th Act of Parliament, 1644. In respect whereof the Defendant ought to be absolved from this whole article, and all the crimes contained therein. 5. Not only is the said calling of the said Convention of Estates, and the said Convention entering in the League and Covenant, employing excise, raising of Forces for the Parliament of England, and remaining Acts of the said Convention approved by the said 6th Act of Parliament of 1644; but by his Majesty's Treaty of Bruns, and the Act of Oblivion, in the Parliament holden at St. James's and Stirling, in anno 1650 and 1651, or either of them, all things done during these times contained, concerning between the said Act of Oblivion 1641, and his Majesty's home-coming 1650, whether prejudicial to his Majesty's honour and authority, or to the Laws and Liberties of the Church and Kingdom, or to the particular interest of the subject, are buried in perpetual oblivion. And by the said Treaty and Act of Ratification of the said Parliament, or one or other of them, the said Parliament 1644, and all Acts thereof are ratified; and to amongst the rest, this which is the 5th Act, which approves all the Acts, wherewith the 4th article of the Dittay is founded, and therefore the Defendant ought to be absolved therefrom.

5. As to the 5th Article, anent the burning of the house of *Monckton*, in anno 1645, the Defendant is to innocent thereof, that if it were libelled relevantly, he needed no other defence but a simple denial; but the truth is, that it had been burnt by ignis of the soldiers, commanded by Major-General

Neill Bain, for the time, upon the greatest provocations that could be by two parties, viz. *Monckton* and *Dulor*, having been burnt the night before, and several, both men, women and children, cruelly killed by the concourse of those that were in that house. But it is no way relevantly libelled, in so far as it is libelled, that the Defendant, or others under his command, burnt it: 1. Because there is no Act of Parliament, of all the Acts libelled upon in the proposition, wherewith this can be falsified; especially the Acts anent the raising of an army, upon which (if upon any) it seems it is particularly founded, there is no such old extension of this so high a crime, as to make any guilty of it, by committing it by others, who are under their command. And this was a very unbecoming, terrible circumstance; and in the present case were such dangerous and unjust, that a Commander should be holden to answer for all the illegal deeds done by his soldiers. 2. It is against common justice, the Common Law, by which this therefore is well established, that *delicta propriis rebus autibus, et non capitis sequitur*; and therefore it is not relevant that the Defendant burnt it by himself, or others by his special direction, or private order for that effect.

4. Though it were made relevant in manner fore-said, yet the Dittay is inapt as to this article, and the Defendant ought yet to be absolved therefrom, because the year of God is only libelled, to-wit, the year 1645; whereas not only the month, as in all criminal libels, per *St. Andrew's* 3^d *de falsificatione*, and the Doctors treating thereupon, but the very day ought to be falsified on; for the omission of the day prejudices the Defendant of his defence; specially he adds, which he might and would propose, if the day were falsified on, that being requisite, the day ought to be falsified on, otherwise the libel is inapt. Now *Exhibere deum contra omnes homines amicos et inimicos, per St. Andrew's* 3^d *de falsificatione* *consecratione* *suam addit*. Dunsdale, cap. 3. num. 4. 5. *Defensor* Reg. 6. num. 4. *Maranta* in *spec. de del. crim.* 3. num. 12. per hoc in *L. de parric. reus* 3. in *fin. de publi. judic. & Testis* in *L. Unusquisque* 3. *de parric. reus* 3. *de re quod Crim. lib.* But for it is, that if the day were falsified on of the said burning, the Defendant might, and if need were, would offer to prove, that he was that day, during all the time of the burning, able, at a considerable distance from the same place.

3. *Defensor*, because *Licentiam* *Generis* *Baron*, at that time when the house was burnt, had the command of the said forces (adjoining to the ways to the former defences against the approach and relevancy of this part of the Dittay, and expending the same that may be *delictis* *ante* *anno*); in respect whereof the Defendant ought to be absolved *ab hoc libello*, at least there can be no process upon that part of the Dittay, as it is now libelled. 4. Albeit the Defendant had burnt, or given direction only to burn the said house, as he had not; yet by special Act and commission of Lieutenantcy, granted him by the Parliament 1644, he was empowered to pursue the *Mercenarii*, and their adherents and accomplices, with all kind of hostility, by fire and sword, (with a dispensation) with *baggage*, *mattresses*, *raffings* of fire, affailing of houses, taking of prisoners, and other incircumstances whatsoever, that should fall out in the execution of that Commission in pursuing of them; as the said Act and Commission may at length bear, and which commission is ratified by his Majesty in the Treaty at Bruns, and ratification of that Session of Parliament 1644, anent the other Parliaments and Sessions thereof ratified by his Majesty, all after 1641, and preceding his return. But to it is, that the said *Mercenarii* were at that time, at the burning of the said house, joined with *Monckton*; and it was in pursuance of both that the said house was burnt, as is notorious, (and, if need be, the Defendant will prove) and therefore though he had burnt, or given direction for the burning thereof, he ought to be absolved.

3. By Act of Parliament, 30th Act, 22 March, 1657, it is statute and ordered, that all his Majesty's good subjects shall be altogether free, and liberate in all time coming, from being by any ways called, convicted, pursued, troubled or molested in judgment, civil or criminal, or out with the same, for any deed done, or to be done by them, against the persons, lands or goods, of such as have, or shall be in the rebellion; (by which it is notorious, that the force armed opposition, made by the deceased Marquis of *Monckton* and the said *Mercenarii*, and others under his command, to the Estates, is understood) during the time of their being in the said rebellion, or have been, or shall be guilty with the rebels in their wicked concert, or of any of them, who came under the 6th or second Clauses of delinquencies, contained in the 5th Act of the 5th Session of that Parliament holden at St. Andrew's in the month of January, 1646. But to it is, the Defendant offers to prove, that he, that is, the said *John de Stirling*, named *Charles de Stirling*, who had, as either of them had right to *Monckton*, had joined with *Monckton* and those under him; and so came under the second clause of the said 5th Act of the 5th Session of Parliament, 1646: Or at least, went or sent into their league, or without compulsion entered them in the said house; and therefore the Defendant ought not to be pursued, even though he had burnt, or given direction to burn the said house (as he now says), and being pursued, ought to be absolved from this article; like as it is *conjectura* alleged for the Deiver in falsification of the said Act, That the same is ratified by his Majesty's large Treaty at Bruns, as being one of the Acts of that Session of Parliament, 1644, which amongst the other Sessions of Parliament, and Acts thereof, since the year 1641, and preceding his Majesty's return, is anno 1650, etc. ratified by the said Treaty, as also by the Act of ratification, at St. James's & Stirling, in anno 1650 and 1651. By which ratification (or ratification of his Majesty by the Treaty at Bruns) the said Act of Parliament 50, in anno 1647, comes (as a most solemn remission granted by his Majesty, and whole Estates of Parliament, to the persons therein contained); and so like as if every one of them had got a particular remission *in forma*, it had been an unconquerable remission for what were therein contained, so must it now be, being in effect of the same nature and virtue, albeit may be included in one.

6. By the Act of Oblivion at St. James's or Stirling, in the year 1650 or 1651, all acts of hostility, whether between the King and his Subjects, or between Subject and Subject, and what things fell out in their time, between the year 1641, and his Majesty's return, whether prejudicial to his Majesty's honour and authority, or to the Laws of the Kingdom,

2. A guile and ruse is no way relevant to infer the commission of the crime; but by direct law, Law of Nations, immemorial practices of the Kingdom, its authorities, a Member of Parliament or other Council, should give advice or support, according to the petition of the good or ill of the subject debated on, and under consideration; wherein if his reason cannot bring him up, nor his conscience admit him the length of others in such public Councils, he ought to have charity for the one, and excuse for the other.

Like as by the 4th Act, Part. 2. K. Charles I. it is expressly Statute, That every Member of Parliament shall faithfully and freely speak, answer and express themselves upon all and every thing which is proposed, as far as they think in their conscience may conduce to the glory of God, the peace of the Church and State, and employ their best endeavours to procure the same. Under which oath, (read in the audience of the late House, and by him approved in the Parliament, 1641) the defender, as a Peer of that Parliament, in June 1642, was solemnly and to the debates of his reason, and prospects of his conscience, and cannot be called in question as a Member, having freedom therein; and conform thereto in such of this present Parliament, bearing, that every Member shall faithfully and freely, according to their best judgment, give their advice and vote in Parliament.

To the second part of the first member of the said Article, against the defender's proceeding and dissenting from the said Act, 1642; it is alleged for the defender, The protestation is not produced as it ought to be, whereby it will appear, that if any was, the same was before the Act of Parliament passed; and that they did only protest and cause their dissent against proceeding to the determination of the question then on hand, which comes the later to have been in force the Act was made. Like as the defender also, a Member of the Members of Parliament then present, That being asked, if they would retract the protestation after the Act, they dissented to do so; the Act being now passed.

3. A protest, (tho' the same was produced) because it is offered to be proved, was therefore read in the fourth Act, Part. 2. Sec. 2. Charles II. which was approved at the treaty at Breda, and confirmed at Perth and Stirling, as a fact. But for the honourable Parliament, their most full clearing, against the defender's carriage in the fact particular, it is offered to be proved, if need be, That the defender (before the Commissioners return from the fact of Perth, in the fact year), when he heard that his Majesty had furnished his people's desires concerning religion, in presence of divers persons of honour, he expressed himself passionately earnest to engage for his Majesty's freedom. Like as the only difference of the opinion about the engagement was in the manner the grounds of those that were dissatisfied; being as they are expressed in the said protestation, now. That the Parliament should not proceed till the commission of the Church were satisfied; and adding also, (which is not therein expressed) till advertisements and three month's warning were given, conform to the large treaty; until all means of peace had been first essayed; and while first the lawfulness and necessity of that was found to be found by the Parliament, conform to the 7th Act thereof. And it is humbly conceived, that many in this present Parliament do remember, how unanimous all were, that his Majesty should be brought out of the hands of the Scotsmen, to some of his houses in or about London; and all they differed in was, that the Church should be consulted about the settling of Religion, all means of peace should first have been essayed, and warning given in manner aforesaid, conform to the large Treaty; the breach whereof was made out of the grounds of that declaration, Act 7. And it cannot be refused, but that at several meetings, the defenders showed the dangerousness of that war (especially if the army should be defeated), from the bad consequences that might thereupon ensue to the King, Kingdom and Religion; as immediately thereafter fell out. Whereas had the Nation been united and whole in their power and force, that army of Scotsmen, in probability, would not have dared to have attempted those matters which afterwards they did. So that the case being truly stated, there will appear no malice against his Majesty's person, authority, and nobility at that time, but an inclination to enter into a war of such danger and hazard, and the respect they had to the security of Religion (as all then professed) according to the Covenant.

To the second member of the sixth Article, whereby it is alleged, That in contempt of the authority of that Parliament, and against the preservation of his Majesty's person and authority, that the defender convoked an army of rebellious Subjects, and therewith committed divers and sundry outrages, slaughters and villainies, upon the persons and estates of his Majesty's Subjects, invaded cities and castles, seized upon magazines, arms and ammunition, and called in an army of Scotsmen to his assistance:

It is answered, first, That the time is not relevantly followed upon any act of the proposition; at least till the Advocate's conclusion upon which said thereof the issue is founded, the defender is not bound to make answer.

Secondly, The defender denies that he did convocate his forces, or gave counsel or command therefore: And as to his doing with them, he will be acquitted.

1. Because by a treaty at Stirling, betwixt the chief Officers of the army then alive, and out of prison, and a Quorum of Members of the Committee by authority of Parliament, 1642, who had power to order the internal Affairs of the Nation, the said meeting, and all acts of hostility, and others thereby committed, are expressly discharged, *sub modo*, and a mutual oblivion and indemnity thereupon.

2. Any meeting he had with them, was by a call of those of the Committee of Estates, who joined with those forces, and who in the Treaty is acknowledged the Committee of Estates.

3. The said meeting and settling thereof, together with the Treaty and Articles thereof, is ratified and approved by the third Act, a Part. 2. Sec. 2. Charles II.

The third member of the sixth Article, bearing, That apprehending his power was not able to withstand his Majesty's good subjects, the defender called in to his assistance the army of Scotland; and that he went into *de re* and not with the commander of that army, had private consultations with him, and prevailed with him to come to Stirling with his ar-

my, whole coming he might have hindered; because Oliver said, That he could not help his lying upon the terms of *Mortification*, for that his playing and going depended upon the defender; and that he did condescend and consult with the Scotsmen and their commanders, in *Edinburgh*, in the *Campan*, in the house called the *Lady Hunt's Lodging*.

It is answered, That as to speeches and consultations in general, not relevant except they were conducted on; and as to the words spoken by *Granville*, if spoken by him, it was a lye, and can infer nothing against the defender; and the occasion of his lye was still he got *Barnard* and *Corbie*, which could not be referred till the Treaty of Stirling was closed. And as to his meeting and treating with him, *aforesaid*, because he and others did the same in warrant of the Committee, and which Treaty was ratified in the fourth Act of Parliament aforesaid.

To the fourth member, That he convoked and tried to the drawing up of a letter, directed to *Granville*, wherein he and his compliers engaged themselves, in the name of the Kingdom of Scotland, to do their utmost endeavours, that more who had been accessory to the engagement, or in arms at Stirling, in pursuance thereof, should be employed in any place of Trust, without the advice and consent of the Parliament.

It is answered, 1. No such letters produced.

2. Though it were produced, yet containing and voting not relevant; because a vote in the Committee of Estates can infer no crime against the defender, nor any member thereof, nor any Act passed in the said Committee: especially being.

3. The Acts of the said Committee were ratified in the fourth Act of the Parliament aforesaid; all ratified thereby by the Treaty at Breda, and Acts of ratification at Perth and Stirling; and the necessity thereof would be also considered in respect of the large Treaty, both Kingdoms having given their public faith, that the breakers should be considered up to the shivers; and that the English army then upon the borders, required the performance thereof against the offenders, and for farther security, pledges and places of strength. It was at that time counted a great favour (considering their power to have made their own terms) when they might have imposed and forced what they pleased more, yet they did accept this Act.

To the fifth member of this article, bearing, That he did draw up, at least did counsel the drawing of certain instructions, given to Sir John Glyn, purporting, That the Noblemen, Gentlemen of quality, and considerable Officers, who went into England under Duke Hamilton, and were there prisoners, should be kept in pledge for the peace of the Kingdom:

It is answered, 1. Not produced as it ought to be, that it may thereby appear to be false; and 2. Not relevant, (out of the Committee) except they were libelled against, and voted at that time; for *non appaet factum*.

3. Not relevant, voted *quia in finem non tenetur de capite*.

4. Opposes the authority of the Committee, Treaty, Acts of Parliament, and Ratifications aforesaid.

To the last member of this Article, bearing, That he gave warrant under his hand for issuing of a proclamation against the families of the Laird of *Ree* and *Fyvie*:

It is alleged for the defender, 1. No such warrant produced; if any such warrant were produced under the defender's hand, it will certainly appear to be in contempt of some Committee, and so not his personal deed; nor that it did so can infer any crime against him.

2. No such proclamation issued.

3. Although issued, yet that took no effect, and so was *minus tenetur*, of course of office non productum.

4. Opposes the Act of the Committee, and Act of Parliament, 1649, aforesaid; which Parliament, and the whole Act thereof, is ratified in the Treaty at Breda, and approved in the Parliament at St. John's and Stirling; wherein was also made an Act of oblivion, afterwards before alleged on: in respect whereof the defender ought to be acquitted from the said sixth Article, and whole member thereof, and all therein contained. And because the defender has in his defence so oft alleged the Act of Parliament, 1649, for his vindication, he desires that it may be observed (which is very observable) that by the printed Treaty at *Edinburgh* and *Stirling*, September, 1648, it is agreed and appointed by both of the Committee at Stirling, 1648, that a Parliament should be down before the 10th of January next; conform thereto, they did convene and sit down the fourth of the month of January, as by the said Treaty, and the first and third Acts of the Parliament doth appear: whereby it is clear, that the said Parliament, 1649, was appointed to sit by the Committee of the Parliament, 1648; who had power by the last Act of the said Parliament, to convene the Parliament before the first Thursday in March, 1650, if they thought fit: as also that Session of the Parliament, 1649, by the last Act thereof continues the same to the first Thursday in March, 1650. At which day the convening in the next time, and this ratified the Act of Parliament made in the same Session; and which day was the day on which the Parliament, 1648, continued the same, with power to the Committee of Estates to convene the same sooner, if they thought fit, as is said. Whence it is evident, that the said Parliament, 1649, whether as appointed by the unconvened Committee, 1648, at Stirling, in the first Session, or as it is continued to the first Thursday of March, 1650, in the second Session, (both conforms to the last Act of the Parliament, 1648) may fulfill and obey the said defender his just reason, to found his defence upon the acts thereof. It is also farther considerable, as to the loyalty of that Parliament, that therein the murder of his late Majesty was declared against, his present Majesty proclaimed and brought home, his subjects of this Nation reconciled to him, and taken into favour, as army appointed to expel his enemies, the crown set upon his head, and that Session of Paris, wherein the whole preceding proceedings were approved, was dignified by the presence of his royal person.

And to the sixth Article, and that part thereof where it is libelled, That the defender, in June 1649, not daring to appear in public, or in a direct way, his Majesty's home-coming, he procured the application made, to be cloagued with such limitations and restrictions, as were most derogatory to monarchical Government; as is alleged to be more fully explicated in the Commission, Instructions and addresses, which are repeated as a part of the Libel.

It is alleged for the defender, r. Seeing the said commission, instructions and address are labelled on, and repeated as a part of the duty, in all law and form of process, they ought to be produced with the bill, for the reason adduced in the defence, against the relevancy of the proposition of the duty; and still which be produced, it cannot be consistent with the said limitations and restrictions, and how far they are derogatory to monarchical Government; and therefore till then there can be no proof.

2. It is not considered nor cleared, on which of the acts labelled on in the proposition, this Article and Members thereof are labelled, and therefore it is obvious and insight: as to it incoherence, the defender has full reason to deny, that it can be labelled on any of the said Acts, to wit the crime and pass labelled against the defender, none of the said Statutes making any mention of treating or inserting any pass therefore. Likewise also numerous and address to the King and his subjects, all Lawyers and Politicians do agree, that the best and safest way of removing the same, is by Treaty; and that being concluded on, it is also their opinion, that the same are to be observed, at least so far as to exempt the subjects from punishment, to whom indemnity has been there by provided. And in this, *Graviss deprelo de hunc*, 1. 3. cap. 10. in such clear; and many others who write on that subject. And therefore the said Treaty being concluded, and after ratified by his Majesty and his Parliament, the defender cannot be called in question for his accession thereto, nor the pain of treason thereupon inferred: For the said Treaty and conditions thereof being accepted and agreed by his Majesty's voluntary consent, cannot be like as a crime, far less be high a crime as treason, against the defender.

3. *Apert* or from that member of the said Article; because not only after the said Treaty did his Majesty tacitly admit any crime, if any was, in the said Treaty, by admitting the defender to places of trust, by receiving the crown from his hand at the coronation, and by admitting him to take the oath of allegiance, and to be a Member of his Majesty's Privy-Council; but also after the said Treaty was ratified, there was an Act of pardon and oblivion by his Majesty and Estates of Parliament, at times before alleged, and is here repeated.

Though the above-written defences be relevant in law, as to the said member; yet for the defender's further evasion, the honorable Parliament would take notice, that all along the preceding Articles, all the publick addresses from the year of God 1649, to the year 1648, (wherein the Generality and Representatives, both civil and ecclesiastical in the Kingdom, concerned) are charged upon the defender as his particular address, or as if the defender had been the special author; whereas in this article meet the treating with, and bringing home of his Majesty, therein it is known the defender, according to his bounden duty, was most active and zealous; and therein he wrestled with all his might, and by his pains and God's blessing therein, overcame many difficulties, and did discharge the same. The libeller does in fact detract from the defender's faithful discharge of his duty in this so glorious action, and without labelling the least presumption of any conspiracy to make the crime probable, the defender is accused, as if he had in his judgment been against his Majesty's home-coming; which because he did not sove publicly, therefore he breaketh himself to understand dealing, to clog the Treaty with limitations and restrictions, excluding the defender from all accession to the said duty, in so far as it was good, viz. to bring home the King; and making him to be the sole author of all labelled to be evil therein, to wit, of the limitations and restrictions. Whereas the truth is, he was active in the King's home-coming, and was passive in the other; having laboured what he could, that there should be as few conditions, and the same as satisfactory to his Majesty as was possible at that time to obtain, which is known to all that did transact the said affair, and which, if need be, is offered in proof. And for further defence hereof, if this Article shall be further labelled on, my Lord Advocate will be pleased to confound to declare who the Parties were that made the reason for address to his Majesty, of whom the defender should have been afraid, if he had been of a contrary judgment, to have opposed openly. For if the defender had so great fear in affairs, as all along the preceding Articles he is allowed to have had, and also if he had intended, (as is broadly and with foul mouth alleged) in the said Libel all along alleged, to have corrupted and evaded the King's Majesty's authority, government and posterity; and had such correspondence with their abominable Regicides, as all are persuaded by the said Libel to believe, in the said year of God 1649, when the said traitors were frang, and both this land their dominion and otherwise, very low; and when the power was in the defender's and his complex hands, (as my Lord Advocate is pleased to label and even there) who at that time had the managing of affairs; there was the fittest time and best opportunity, if they had any such disloyal thoughts, to have shaken off that Government. But so far did they abhor any such treachery, that they not only proclaimed his Majesty, and according to their duty owned his interest, even with the hazard of their lives and fortunes, there being none to follow, but easily might have seen, that the discharge of the said duty would bring upon themselves and the Nation the power of England, (the only power of arms and arms) being at that time in the abominable Regicides' hands) who did immediately thereafter invade this Kingdom.

As the other member of the tenth article, whereby it is labelled, That the defender, (to obstruct his Majesty's purpose, viz. in so far as in him lay, and to satisfy him therefore; by his and his complices cruelty executed upon the Marquis of Montrose, who as his Majesty's Commissioner did represent his Majesty's person) caused to murder the said Marquis, in some 1650, in manner, &c.

1. It is no way relevantly labelled, that the defender in general caused to murder him, except it were considered, *ex male* he caused, and if thereby be meant his voting in Parliament, 1649, in the said matter, his rejection, because a Vote, Act, or Sentence of Parliament, is no way relevant to infer a crime against any particular member therein, as back here set before alleged.

Libeller's. 2. The instance of the forfeiture of the life and estate of the said Marquis, was no decree of the Parliament 1649, but of the Parliament 1650, which was homologated by several other Acts of Parliament,

excepting the said Marquis amongst other excepted persons, as specially by and by the said Act of the Parliament 1648.

And yet, 3. The Defender did not vote in the business of Montrose, as he can prove, if need be, by the members then present 1649. And as to the aggravations of the said murder, the said Marquis being his Majesty's Commissioner for the time; it is no way a relevant circumstance to aggravate the same, except it had been labelled, that the said commission had been given to the Parliament, which nobody can affirm; but on the contrary, the said Parliament conceived they had just reason to presume that there could be no such commission for his coming against them at that time; because his Majesty, after the murder of his royal Father, very graciously had admitted their gracious applications to him.

Like as before Montrose's coming at that time to Scotland, and always thereafter, his Majesty had a Committee of the said Parliament, under the name and title of the Committee of Estates of his Majesty's Kingdom of Scotland.

As to the Defender, his alleged keeping correspondence with Cromwell in the year 1650, as the same is irrelevantly labelled, no doubt nor acts of correspondence being considered on; for there was never any such thing. And there was one named Hemmels, who vented this untruth, laughed at Sterling, and at his death did declare, *That the same was a self unjust calumny*, and it is not to be believed that at that time he would have charged his fault with a Lie; and in Law, the words of a dying man are oraciously believed.

As to the Act of the *High Kirk*, the Defender (noways acknowledging the relevancy of the said article, as is intimated) was so free from having the least accession to the said Act or Declaration, that he loosed in good knowledge thereof, to evidence his fidelity to his Majesty, in so far as to be proved by witnesses (for their loyalty above all exception), that when the said new came, that the Commissioners were about the drawing of the said Act, the Defender gave advice to his Majesty, to draw a full Declaration, and to go such a length, as in freedom he could, that thereby he might prevent the said Act, and obviate the perjury thereof. But as for the other that was prefixed, he was altogether against the same, and dealt with the Minister who came from the Commissioners of the Kirk, to forbear perjury his Majesty therein; which also, if need were, might be proved.

As to the eleventh article, and subsequent articles, because the same are for deeds of compliance after the Usurper had prevailed and were in possession, before the Defender made particular answer, it is assumed, to premise in general, that it being notoriously known to the world (to the eternal honour of this Kingdom) as far that damnable usurpation of Oliver, not only we were not active in establishing the same, but according to our bound allegiance to our Sovereign, were to the utmost possibility of our power in arms under his Majesty; and otherwise active against him, and in opposition thereto, many lost their estates, many their lives, and all of us our liberties; and when we could do no more, being oppressed by the force of the said Usurper, (in a chafe forced Vagabond) we cried to God and Man, sending Heaven and Earth against Usurpers, (even when their hands were raised against us) and his army, amongst many other excellent maxims, were all gaily of this usurpation. We have suffered, and been only passive under that irretrievable force. And as this was the condition of the Kingdom, so specially the Defender, who as he had been most active and instrumental in his Majesty's home-coming, (which was the only ground of the quarrel, and for which he was looked upon by them as one of their capital enemies) even so after it pleased God for our exercise and punishment, to suffer their power to prevail over all his Majesty's forces and over this Kingdom, such assistance had the Defender, even so much as so line under their power; much less to comply actively with them; that after *Widdow*, the Defender offered to his Majesty, if he could get his company, the company of any other honest Minster, who he would never capitulate with any Englishman, so long as he could submit in any part of Scotland, either in his lands, or his treasuries. It is hardly named that Mr. David Dick may be examined, Member of the Diet of the Diet of the Diet, to have perished those of *Abel*, *Adams*, and others, his neighbours in the Highlands to be concerned in him, that they might have jointly made fine probable force, for settling the over-riding power of the Usurper; but all in vain. Likewise, long before that time, the whole forces and strength of the Kingdom were furnished, yet, the whole Kingdom, by their Deputies and Representatives (who met at Dalkeith, with the Commissioners of the Parliament of England, to called) was forced to submit in their power, and accept the tender of the Union of this Nation with England, proffered by them. Neither did he at the said time, in August 1651, voluntarily come in and capitulate with the said English; but was *forced*. (Several Regiments of their forces, horse and foot, having faithfully come about his house, where he was for the time lying dead) as can be testified by Dr. Casselburgh, who was with him for the time, and is humbly moved to be examined thereon. As also, notwithstanding the said fatal proposal, and the Defender's condition, though they threatened (notwithstanding his sickness) to carry him away prisoner, yet all their threats could not prevail with him, but he did absolutely refuse to subscribe the articles first offered, which contained the ruin of the Union, and an abnegation upon his part to promote the same, and the Government as then established, and to live peacefully, yet, such jealousy had they of the Defender, that by his capitulation he was prisoner upon demand. Neither during all the time of their power over this Kingdom, had he ever any favour of the said English, but was always looked upon by them with a most jealous eye. And for evincing hereof, the Defender humbly craves, that there be a commission granted for examining of Lieutenant-Colonel Lums, (aunt what was deposed by Montrose, and several others) one of the Defender's most affectionate to the English, or any other authority but the King. Likewise, it is assumed how truly he was preferred before the English were for the time, for payment of 40000 Sterling, assigned to be due for bygone sea-duties. This being the Defender's true state, it is beyond

that the honourable Court of Parliament will take consideration how the Defender hath lost as long as he could, till he was prisoner, and will have a different consideration of Subjects acting under the lawful Magistrate in exercise of his authority by himself, or others lawfully constituted by him; and of the actions under cruel usurpation and tyranny, the lawful Magistrate being forced, for his own safety, to abandon his Dominions and People to the lust and oppression of the unjust Usurper [who was master not only of their fortunes and persons, but their lives and all that was dear to them]; and had for a long time detained the possession of his unjust usurpation, and devoured the lawful Magistrate. Which case is not only endorsed by all who were on that *fajny*, but also Case is the third part of the Institutes of the Laws of England, cap. 20. *contra Tyrannem*, in expounding the Statute of the 25. *Edm. III.* upon the words of the Statute &c. *Rey*, puts forth a weight upon the King's living in possession, is, on the contrary, a full and absolute affirmation that the action is not of a King regnant, and in possession of the Crown and Kingdom; as also, that in such cases, a favourable consideration is to be had of the actions of a *fajny*, who was particularly noticed, and justly looked upon by the Usurper, for his affixion to the lawful Magistrate and his Government. All which being remitted to the Consideration his Grace, and the honourable Parliament their consideration, he now comes to answer to the eleventh article: again, which eleventh article, and all the members thereof, as labelled, it is alleged, the said article is general, not confining only on the day or month, nor on the particular year of God, of the committing of the deeds therein labelled, but only alternative is *anno 1653*, or *1654*, and therefore (as his been oft before alleged) the same is in-apt, and there can be no process thereon. It is not considered that, in the clause, which is the first of Parliament, is labelled, that the petitioners are *clearly*, and several members thereof, are substantiated, and sufficient it is affirmed and general, and in that inconsiderate the Defender has reason to deny, that it can be substantiated on any of the said Acts to infer the said crime and pain.

crime and gain. The article, which is first libelled in this article, *The Defender* did not write to inform the Commissioner his Grace, and the Earl of Glendown, not even commissioned by Sir Adolphus, the Defender repeats the two exceptions asserted, against the whole article, being confident this cannot be sustained on none of the Ads libelled on. And further alleges, that it is not relevantly libelled, to assert *(vel sine causa notum)* against the Defender, he led to high a crime, except it were libelled, that your Lordship's commission had been flawed him, and he required, which was never done. And herein he may refer himself to the Commissioner his Grace's Declaration; and if his Grace does not remember, that the Defender sent him word of his being engaged to him, and with his Grace, and to have done with him about the business but had never the honor to have his Grace's answer or acquiescence.

And for their clearing, that his not joining, except he had been required, is no crime, it is evident from the fourth Act of the fifth Parliament, *Year. 1.* that those only are punishable, who do not add the King's bell, being required thereunto. And *Grege. page 385.* says, that because the King has so many Vassals, they are not obliged to be punished, except the particular pain to be inflicted upon the *array-day*, be particularly expressed in the edict, by which they are commanded to appear. And *page 365.* he says, that those who come not, being warned by an edict, shall be punished, and *page 292.* he says, that the Vassals should not be obliged to appear at any such services, except they be desired, which command shall be proved by his Poets. These edicts were particularly required by the fundamental Law, and were called *hors l'ame*, which is derived by *Cujas*, to be the calling and citation of the army, and is *lib. 3. cap. 20. quart. sec. franc.* to be the punishment of him, who comes not to the King's bell, when he is called: and this assertion is clearly proved from *Rogier*, in his *Treuzies de Roy. Reg. cap. 33.* Likewise by the last Act of the fifth Parliament of King *Jacob 1.* it is expressly ordained, that those who disobey to defend the King against notorious Rebels shall be challenged.

2. If they be required by the King, as it is said;
3. And except they have for themselves reasonable excuses. But sure it is, the Defender not only was never required, as has been alleged, but there were even pregnant reasons, as he humbly conceives, the which rendered very probable at that time. Albeit it be the duty of all his Majesty's subjects, to rise for his Majesty's liberty, in opposition to Unlawfulty; yet it was not reasonable, as affairs then stood, till either they had been defeated by sea in the engagement, that they then had with *Halifax*, (whereby both the forces might have been diverted, and the transportation of *Victuals* and *Ammunition* from *England*, *Ireland*, and the parts of *Scotland* under that command, and that army in *Scotland*, might have been interrupted); or that *Spain* and *France* had concluded that peace, whereof there was great fear. In its, and then upon his Majesty's subjects in *Scotland*, they might have had hopes of some probable assistance in the recovering in his Majesty's service, or that division, and in consequence, confusion, had fallen out in the English army amongst themselves; wherein time seemed to be but little lost, so long as the appearance for his Majesty should meet them as against a common enemy, as it was. Like to it could be thought in *Ireland* have no other effect; and as in effect the event proved, that that army never divided till they had no common enemy, against whom mutual perversions both accelerated a mutual concourse, but all at unity one with another. And albeit a particular command had not been absolutely necessary, (if his Majesty had been there *in person*) yet in a juncture like these, wherein such a war was improbable for many false reasons (which induces the Defender to believe, that there was no commission granted at that time), which pretexts might *enlarge a debt*; and without doubt (as has been said formerly) there can be no crime. And though he had been required, yet could not have been purified for his not obeying, being in effect to do what was impossible to be done.

But this is conceived only to be *added* as an aggravation of what followed, which it. That he joined in open hostility with the *Uppur's* forces, especially with the *Leath-Cocher* and *Tindalton*, as the *last* Collet was sent to *Tindalton*, as the *last* Tindalton, whose he was in the *Highlands*, and in opposition to the *last* Earl.

1: is answered, c. This member is general, not condescending upon the

It is alleged first, that a prisoner should go in company (being commanded) with, and to those whose prisoner he is, is not a soldier's duty.

7. Though that had not been, yet he acknowledges that the number of the alternative, ancient his familiarity of never a power of great cause to *abhor*, Governor of *the*, was. That the Defendant said that he was, but, or in his position, being under the absolute power of the United, they might command him to go, or call him where they would, with whom to go along, or to bring whatever he had to them, had it to do on his back, had been he able to carry it, and that cannot be imposed to him for any crime (otherwise who should be innocent) when forbidden to multi they not give to their enemy of their goods, whatever he will have? And he said, that he was not, and that he was not, to bring others, and he was, in effect, did they not take what they pleased? But as for voluntary going, or joining in action with *Yankee*, or any of the others named in their service, the Defendant absolutely denies the force.

them. For his taking and relieving prisoners, *non reboror*, except the prisoner was specially confided on: specially relieving of prisoners is not relevant to infer any crime, but on the contrary is a good office to the persons and parsons concerned: it is belied that he, as an Officer under the English service, took and relieve prisoners, which can never be made agree, whenever the same might injure. But to finish, the Defender needed with no such things; and the Defendant shall truly relate the point of fact which he conceives hereby to be intent, which is as follows: The Defendant hearing that his Life and County of *Kent* was pillaged, and going upon the river *Cole*, the year wherein he was being followed by another boat and the Defendant being hired what they were if they allowed they did belong to the Earl or *Glover*, but could know no woman; and thereupon the Defendant having some suspicion that they were rather robbers, than soldiers belonging to the Earl; and fearing that General *Atch*, whom the Defendants were then going to, and whom he had never seen till that time, might give notice thereof, and make use of the same as a snare, the Defendant advised them to secure their money and arms in the hands of one of his servants, upon assurance that the same should be delivered to them, after he should be certified what they were; and thereafter common said them (feeling to incur the danger of a private pursuit) to the Garrison of *Dunbar*, and not under the action of soldiers under the Earl's *Glover*, but as common Delinquents: so that injury done to the Earl, is not his fault, but a few years ago, the said Earl's servant, should have been sent to the common debtors' prison, and their names were never enrolled as prisoners to be exchanged; and according to his promise, he could be re-delivered their money and arms.

As to the following member of that article, viz. That *th. Deft do and pay from the Ufficers, for a company of Scots under them, as I go further, &c.*

A adhering to the federal exceptions against the discharge of the propositions of the Deafy, and exception against the whole article, is the beginning of the answer thereto, for that it is not considered, under which of the Acts labelled on this member is forbidden, all which is done, the Defender as reason to deny that it falls under one of them. Neither is it secretly labelled, to infer any crime, unless such be labelled, that the Deafy are having connection with the Government on an equal footing with the hearing, and levelled that corruption, or called their names as a learned company, under the English and their Regiments, and engaged them to the Commonwealth and their Province, because they are engaged in a soldier in any service.

1. That he be *relator in causa*, that is to say, enrolled, for *lex ord.* 42.
N. de Test. *enroll.*

2. *Unproven Sacramentum*, that is, that they gave the oath, *ex solis*. 11. *F. ad. 15* Figer, 2. cap. 6. or that one Defender had employed them in the English military service, or to execution of their orders, all which the Defender absolutely denies; they never having enrolled, given any oath or engagements, or employed in their service, as is said.

But on the contrary, and the truth is, there is to be in the said fire, and all other places in the Highlands in broken towns, watches to keep off depredations, martial reits, and other operations amongst the country people themselves and their neighbours in such run . . . And accordingly in the year of God 1653, or thereabouts, the fire of Argyle not being able to contentize these watches, and pay a shallo, (not being as yet well planted after the burning) General M^r was perswaded with, to help to extend the said watch (like as at the same time, the several other fires building upon the Highlands, at Inverness, Perthshire, Aberdeenshire, Sutherland, Dumfriesshire, all at one had w^{ch} as at the said time, and allowance therefore from General M^r), w^{ch} within two months did withdraw the said allowance from the said w^{ch} of Argyle, because they refused to engage against those that were then in the hills, under the Defender's son and others, whom the G^l General M^r also alleged they favoured; and thereupon withdrew his help and allowance for the said watch, and spoke of the Disorder w^{ch} he. Grace pleased.

And to evince that this was nothing but a watch, the men were not in a formed company, but in civil gentlemen in the flare had the ordering of several members of them at convenient and needful places of the flare, with responsible entertainment, and without labor, and all and many soldiers; all which is necessary, and, if need be, the Duke offers to provide. And the Duke of Somerset is hoped will remember how much offered.

be, is offered to be proved, and that he was most rigorously persecuted for the same, not only threatening to use real execution against his Estate, but also to imprison his person.

For evading whereof, he was obliged to go at that time to London, and could not have his person secured from arrests there, but by going in concealment: And it is known that his Majesty is so gracious, as in not a few, to excuse what they did of that nature, so ever though but their own personal sin, not imputing it to unfaithfulness in them at such a time; according to whose glorious and suitable example, it is with much confidence hoped, that the Commissioners of Grace and honourable Estates of Parliament, will have a favourable construction of what the defender did in that particular, being considered therein both for publick and private interest, without any decent or free, either in the intention or event, there being nothing at that time, while the defender was there, done, for continuing the usurpation, or excluding his Majesty's letters.

Likewise it may appear, that it was only the concourse both of publick and private interests and necessities aforesaid, that moved the defender to go at that time, because, though he was delayed oftentimes before to go, yet he full refused till then. He was one of the last that went to that, being the very last (pretended Parliament under their power) not till long after that commissioners had gone for the Nation for several years, and that all had submitted to their constitutions, and were of necessity made use of as laws for the time.

As for the aggravations of this member, and to the first, That because of the defender's inability, he was incapable to have been elected, at least might have refused.

It is answered, That it is notorious, inability was not then respected at all, nor was any ground of excuse, the meetings to the elections being commanded to all, as heretofore: And so noblemen and others heretofore met promiscuously through all the Nation as is notoriously to all known.

And whereas it is libelled, That he did not his residence within the Shire, it ought to be repelled as irrelevant, because it is true, and was known to the Usurpers, and their Ministers and underlings, that he had lived within the said Shire, and that considerable. So that he could not decline the said employment without prejudice, the will and lust of the Usurper at that time being uncontrollable, and tied to no rules of law or justice.

And whereas it is inferred, That sitting and voting in that pretended Parliament, he acknowledged his Majesty's power and interest to be in the Usurper's person. It is answered,

1. He acknowledged the same no otherwise but as all the kingdom did, to wit, *de facto*, for *de facto* the Usurper had taken or possessed himself of the power, as his Majesty is pleased to speak of in his proclamation assent commences with *Propterea*, in October last, and had obtained the force for a long time: But neither the defender, nor any other lay subject, ever did, or will acknowledge, that *de jure* the same belonged to him, or that he had any just right or lawful title thereto: as also *Legis* says in the above-written paper, speaking of them that seek from Usurpers that use of Government; whereunto, he says, they are holden in and obliged, once taking on them the Government, (though finfully and unlawfully) they seek the benefit of it, says he, not absolutely, but under a tacit condition, viz. if the Usurper will take upon them the Government. *Potius*, says he, *sed tamen quoniam credimus, si tunc se per principis gratiam* (speaking of the Usurper). And that the Usurper would not give the use of the power he had taken upon him, but in the way he pleased, was his crime, which he continued during his usurpation. In respect of all which, it is justly erred, that the defender may be absolved from the crime of treason, libelled thereupon.

Like as for the defender's further clearing in this particular, it is humbly defined, that certain murders and others above exceptions, whom the defender shall defend on, may be examined, if after his return from England, in anno 1658, he did not express with great joy his hopes, that business in England did tend toward his Majesty's advantage.

Item, That a commission be directed for examining Sir Andrew Ayley Greyer, and several other Englishmen above all exception, who the defender expressed himself in private asent his disaffection to that usurpation, during his being there the time of the said Parliament, even though to his very great hazard at that time.

Item, That certain persons, upon whose names also he shall defend on, may be examined, if the defender to their certain knowledge, at the time of Sir George Burd's rising (which fell out immediately after the defender's return from the said Parliament) did not put himself out of the way, being informed that he was to be secured, and thereupon delay'd his journey to Calcutta, and so be the reader to have had hold of any opportunity that should have offered for his Majesty's service and reformation; that time being the most probable that ever offered after *Worcester* fight.

As for the precept of twelve thousand pound finding, which is alleged the defender got from the Usurper.

It is answered, The defender should obtain a precept, but not as a reward of any service (which he never did, nor desired to derive from them), but for what they had wrongfully intermitted with, of the half of the estate of wine and strong waters, whereunto the defender had right by Act of Parliament, before they had any power in Scotland.

And as to the thirteenth Article, fifth, for the whole Article, it is not concluded on what Act of Parliament the same, consisting of three different members, is fulfilled; and till it be considered on, there can be no process thereupon.

And as to the first member thereof, assent the words alleged spoken at January.

1. No vote is considered on, and therefore the libel as that part is inept for the reason aforesaid mentioned, for which a criminal duty ought to be specified in the time, at such year and month.

2. Whereas it is libelled, be rebuked the Ministers for praying for the King, in the words libelled, or some such like words; *non relevat* as to the ministers, except the persons were considered on, whom he rebuked.

3. *Non relevat*, the such like words; some such like being most general, except the words were particularly libelled, alleged to be such-like whereby the defender might advise his defence, and allege why they were

not such-like, as he would, if any words ever he spoke were considered on; for the truth is, he never spoke any such words; and was so far from rebuking any for praying for the King's Majesty, that after the defeat at *Worcester* (which is the general truth libelled, wherein he should have rebuked the ministers for praying for the King), he himself exhorted continual praying for his Majesty both in his Parish-Church and Family, yea even in presence and audience of the English when they came there, though it was to his great hazard to do so.

As to the second member assent the words libelled and alleged to have been spoken by the defender at London, That he wondered how the people should be so mad as to call home a family whom God had rejected, and would never return; or some such-like words.

First, This is also general; neither time, that is, year nor month, nor particular place, considered on.

Secondly, It is libelled, That it was in the presence of persons of quality, they ought to be considered on.

Thirdly, Insofar as it is libelled the defender said, The people were mad to call home his Majesty; it is general and unapt, not considering what people, and what was the occasion; if there was any motion made of calling home the King, whereupon that should have been spoken, and among whom it was. And *Dawson*, cap. 30. *præc. com. v. 1. and others*, say, A criminal duty should be most clear, and contain assent *crimini* *facti*. *quisque*, lib. 30. *P. de accus. et Barr.* and others, hold, that it should contain all the qualities of crimes alleged to be committed.

Fourthly, Some such-like words are *irrelevant*, except the words were specially considered on: which if they were, the defender would allege and evince they were no such-like: for the truth is, he never spoke any such words, but on the contrary did all that he could there to make way for his Majesty's happy Reformation, as has been at length cleared before.

And as was a very suspected person, insofar as in the year one thousand five hundred fifty-seven, *Oliver* was so jealous of the defender, that he commanded him to fly at London, and not to return to Scotland, till his affairs, as he was pleased to express, were settled. So that not without great difficulty, by the mediation of the Lord *Brough* and *Charles Fleetwood*, he obtained his liberty. Whereupon the defender defies the said *Charles Fleetwood* may be examined, which he also desired at London. And not only was fulfilled, as obvious to the English for his known affliction thereunto, as is notorious, and has also before been explicated.

As to the third member of the said article, assent the alleged speech in *Manchester*:

1. Neither the year nor month considered on, and therefore general as to the time, and inept.

2. As to the first member thereof, That he would own any thing he had done.

First, It is exceedingly general, and not relevant; except what were the things he had owned were specially considered on, and what time, year and month: It is an unparalleled generality, and therefore will make special, no process thereupon.

Secondly, It can import nothing in common sense, wherein to own a thing is to acknowledge it for a man's own; but what he had acknowledged to be his own, whether word or deed, he would yet acknowledge, which is an expression of ingenuity, and no crime: And this being the received sense of owning, the word cannot be strained to any other sense; or if occasion should be taken to do so, and that another sense could be put on that expression, yet being *ante interpretatio copiosa* of the most usual interpretation it is to be taken, *ante* *pro* *h. l. i. P. de reg. jur.* as being both just and defensible by that line. And in ambiguous speeches, or such both just and defensible two senses, every man is the best interpreter of his own mind, and his interpretation ought to be admitted, *pro* *ex. in assignis* *P. de reg. jur.* and other laws. But the sense aforesaid is so plain, that there is no place for caption.

As to what follows in the said member, That if what he had owned or done were to do, he would do it again, albeit he had known that all that has been would have been.

1. As to what is alleged against the first part of this member, That it is exceedingly general as to the time and month he should have spoken it on.

2. As to what the things are that he would do if they were to be done, and that the time things were done, or owned to be done, or that the saying that he would do if they were to do, is a crime.

3. What were those things in particular that are understood, or may be furnished under the general of all things that have come to pass; whereupon it may be inferred, that that were a crime for the defender to have said, that notwithstanding of them he would do what he had done, if that were to do; and therefore the libel as this part of the member is also general, obscure and inept. And to evince the impudence of this generality, suppose the defender were thus indicted: You are indicted for all that you have done the times by-gone, preceding your being in *James Algernon's* house, after your coming for London: were not that dirty without all controversy irrelevant? Then is it not also irrelevant to be indicted for continuing in general that he had owned, or saying in general, that he would do, that he had owned during that time, if that were to do again, without any further particular consideration?

Like as, 4. There is a very clear, obvious and benign sense these words may have, (if ever he spoke, as he truly never remembers that he spoke any such words) that if it had been possible that times could have returned, and all on to be done under the same circumstances and representations they had then, it is probable these times might be the defender's actions again, though he had known what had come therefrom, not having connexion with, or necessary dependence on these actions, each does not so much as import his present thoughts or approbation thereof, but is very consistent with a perfect disapprobation of the same. And is it not ordinary to say, that if such times were to have been, or such notorious or circumstances of actions as have been, that it is very like I would be engaged in them as well as others, or as I have been myself; and yet to say with great confidence I ought not to do so, like as truly it is known, and if need be, is offered to be proved, that the defender, on the jury century, had had to do of *Cromwell's* Council, and so many other famous Goodness, that things had been done wherein he would

his return, but an action of the case will lie, *Reg. 21. Bagg's case*; and the Sheriff is a sworn Officer, and the law imposes this upon me, and the law is my custom in that case, and gives me a remedy.

Objection. Here is no double return, for it is no return at all, it not being under seal; and the Statute says, all returns shall be under the seal of the Sheriff. So here is no harm at all, he might have gone into the House, if he had pleased.

Reply. As the Common Law there was no necessity the return should have been under the seal of the Sheriff; so as a good return need avoid, and not a void return. If it were not good or left under the seal of all those that elect, what will become of those that sit now? It was never done yet, it is not a return without seal, it is good, *proinde fit*.

As to the exceptions taken to the declaration, it is well laid in *Richards's case* pleading, he lays a *fourth exception* there; and that he lays for action *indebitum factum*, it is as much as *factum indebitum*, a return, which is *proinde fit*, *Richards's case*, and *Richards's case*. How should it be a return, unless it be as a third? And yet it is intended to be as a third, he, *Reg. 23.*

The pleading of *indebitum factum* is the same with *debet*, and no exception taken to it. But if it had been upon a demurrer, there might have been mischief for the exception, but now it is an exception upon a verdict, and it shall be intended, that they that tried it had the right of the return. *2 Rich. 4. fol. 247.* *Over a verdict a vicious plea shall be made good, and *indebitum factum*, 3 Cr. 53. fol. 371. *Southwell and Brown's case*, and *Palmer's case*, 4 Cr. 1. in those cases that have been cited, and yet adjudged good.*

Though there be no seal, yet when he returns this, and a man suffers damage by it, and all the mischief that may happen, who is the party who takes the advantage of it? Is he that has done the wrong? No, he cannot, *2 E. IV. 21. 25. E. IV. 18. 29.*

So therefore, both because the declaration is well laid, and the party well entitled to his action.

The Judgment ought to be affirmed.

An Argument in the great Case concerning Election of Members to Parliament, by Sir Robert Atkins, Knight of the honorable Order of the Bath, and late one of the Judges of the Court of Common-Pleas.

Tit. 26. Cap. 11. *In the Case of King's Bench, Rot. 577.*

Sir Samuel Bernardyffen, Bart. Plaintiff; Sir William Smeu, Defendant. In Trovassu upon the Case.

THAT whereas the King, 8 Ed. 25. of his reign, by a writ out of the Chancery, directed to the then Sheriff of Suffolk, commanded that he should cause an election to be made of another Knight for the said Shire, in the place of Sir Henry North, lately dead; and that he should certify the election under his own seal, and the seals of those that were present at the election, into the Chancery.

Which writ, 12 Ed. 25. Car. II. was delivered to the defendant, then Sheriff.

And, 24. Feb. 35. Car. II. in full County, by the people resident in that County, the writ was read.

And also the plaintiff was duly elected to be Knight for that County, by the greater number of the people then resident in the said County, every one whereof could spend 40. p. even within that County.

And also the defendant, then Sheriff of the said County, *provisit factu* *habeat*, afterwards the same 24. Feb. 35. Car. II. returned the said writ into the Chancery; together with an Indenture between him the said Sheriff, and the aforesaid Electors of the plaintiff, of the aforesaid Election of the plaintiff, made according to the said writ requires.

Yet the defendant, then Sheriff, *Officiis suis dictum minus ponderans, sed maxime et maxime interdictum ipsum Sheriffem in hoc parte suam rite p. agere*, and to deprive the plaintiff of the truth and office of one of the Knights of the Shire, to be executed in Parliament, and to cause the plaintiff to expend great sums of money against the duty of his office.

Falsely, maliciously and deceitfully returned into the Chancery, together with the aforesaid Indenture, another Indenture annexed to the said writ, purporting, the same to be made between him the said defendant, then Sheriff, of the one part, and divers other persons; containing, That the said other persons, as the greater part of the said County, did chuse one Sir Lancelot Trunchb. Bart. otherwise *Lancelot Lord Haulagehouse*, as Knight of the Shire, to come to Parliament.

Whereas in truth, the said *Lancelot* was not chosen by the greater part.

By reason of which false return of the said other Indenture, the plaintiff could not be admitted into the Lower House at the return of the said writ, and also a great time after.

Till the plaintiff, upon his petition to the Commons, and till after he had spent divers great sums of money about the proving of his election, and divers pains and labours in that behalf suffered, afterwards, *fol. 20. Rot. 26. Car. II.* he was admitted, and his election was declared to be good.

To his damage of 3000*l.*

Plen. Non tulit.

*Verdict. Pro parte dom. 800*l.**

*Judgment. Pro parte Sir Samuel Bernardyffen, in the King's Bench, for the 800*l.* damage, and for the 80*l.* costs.*

The defendant, Sir William Smeu, filed a writ of Error before the Justices of the Common-Bench, and the Barons of the Exchequer, in the Exchequer-Chamber, to reverse the said judgment given by the Judges of the King's Bench.

And two of the Justices of the Common Bench, viz. Sir Robert de la, and Sir William Ede, upon argument, were of opinion, That the said judgment was good in law, and were for affirming that judgment.

But the other two Judges of the Common Bench, and the four Barons of the Exchequer, holding the said judgment in the King's Bench erroneous, were for reversing the said judgment.

And the said judgment shall stand reversed; but needs a redress by error in Parliament.

Sir Samuel Bernardyffen, Bart. Plaintiff, Sir William Smeu, Defendant, in an action upon the Case.

I shall divide the Record into the several parts of it:

1. There is first, the occasion, or as we commonly call it, the indictment to the action; that is, Sir Henry North, who served in Parliament at Vol. VII.

Knight of the Shire for Suffolk, died; and a new writ issued to chuse another in his place.

2. In the next place, the right that accrued to the plaintiff, Sir Samuel Bernardyffen, he was duly elected Knight of the Shire.

3. The injury done him by the defendant, with the aggravations of it, viz. Although the defendant well knew the plaintiff was duly elected, and that he did return him; yet contrary to the duty of his office as Sheriff, and according to approach him, and in despite him of the right he had, and on purpose to put him to great expense and charges.

He did falsely, maliciously, and deceitfully return another Indenture with the former; importing, that another person was chosen by the greater part of the County.

4. The damage sustained by the plaintiff, after the writ was returned.

1. He could not for a long time be admitted to sit to do his duty, and discharge his trust.

2. He was put to great charges to prove his election.

3. He did sustain great pains and labour.

5. The right done him at last, and the satisfaction and amends made him;

1. By the House of Commons. His election was declared good, and he was admitted to sit.

2. By the Jury. They have found the wrong done by the defendant, and the damage sustained by the plaintiff; and they have repaid him with 800*l.* damages.

3. By the Court of King's Bench. They have given judgment for the plaintiff.

And the question before us, is, whether this judgment be erroneous? I hold the judgment not to be erroneous. I am for affirming of the judgment.

1. I conceive the matter set forth in the plaintiff's declaration, to be actionable.

2. That the wrong and injury complained of, is such for which the Law gives him a remedy. And 3. That he has taken his proper remedy, by bringing this action upon the case.

All this being in the affirmative, the proof of it lies upon him.

My ground and foundation is this, That where one person does injury to another, and the person to whom the wrong is done suffers particular damage and loss by the injury, there the Law gives a remedy, by action, to the party injured.

But here is an injury done.

And here is a particular damage sustained.

Therefore an action lies.

I shall first prove the ground or foundation, which is the major premiss, then, That where a wrong or injury is done, and a particular damage sustained, there the Law gives a remedy by action.

1. From the nature and quality of the Law, which is to do right to all, and to give relief and redress to those that receive wrong; And should there be any case where a person might receive an injury and damage, and yet have no remedy nor redress, the Law would be defective, which would be a reproach to the Law and Government.

The Law has appointed several Courts, and gives them several powers and jurisdictions; so that in the one or the other, every person that has suffered injury and damage may make his complaint, and have right done him.

Sir Edw. Coke, in his *4th. Inst. fol. 405. in his Exp. upon the Stat. of R. II. c. 14. cap. 11.* It is an ancient maxim of the Common Law, *Non recedat quicquam a curia Regis sine remedia*. Whoever has just cause to complain, shall have their right remedy. And *curia Regis non debet deficiere in jussu adhibendo*.

Both these rules and maxims, which have use and the same sense, are remembered in that *Stat. of R. II. c. 14.*

In *Pruden's case*, 9 Rep. fol. 38. *8. ad. quod*. That an action upon the case lies against executors for a debt, due by the testator upon a simple contract. And in the argument of that case it is said, That by that resolution, *Justice and right is advanced*, and the creditor paid his just debt; and if the debt should be discharged by the death of the debtor, it would (if the Judges) be a great defect in the Law, that there should be a right, and a remedy for it. And the Judges agree the maxim I mentioned but now, *non recedat quicquam a curia Regis sine remedia*.

In *Moor v. Wapman's case*, 9 Rep. fol. 3. it is urged as an absurd thing in law, that a man should have wrong done him, and yet should be without remedy. And the reporter does observe, that the Judges in all ages have endeavored to put the rule of R. II. in execution, *curia Regis non debet deficiere in jussu adhibendo*.

Nay, the Law has to great a zeal for redressing of wrongs, that as far as the maxims and rules of the Law are, yet if there were any rules or maxims that stood in our way to hinder, the Law would break through those rules and maxims, rather than suffer an injury to be without remedy.

9. *Inst. fol. 31.* about the middle, *Non wrong in injuria, either public or private, can be done, but it shall be redressed in our Court or other, by due course of Law*. And in the lower end of that folio, *A justice of Justice is adhered in Law*.

Sir Peter Banes, amongst the elements of the Law, fol. 41. delivers this as a principle, *Remedium a plerisque juris partibus quibusdam deficiat remedium*; which he himself expresses in this sense, That the Law will dispense with some maxims, rather than wrongs should be unpunished.

1. My next argument to prove this position, That where an injury is done, and damage sustained, the Law gives a remedy, shall be taken from the nature of an action, which is the ordinary remedy the Law gives for the redressing of a private wrong.

Now what the nature and definition of an action is, we learn from the most ancient authors of the Law, as *Bracton*, and *Flou*, and the *Assize* of the Justices, as they are collected by Sir A. C. 2. *Inst. fol. 40.* and they all agree almost in the same words:

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his attendance was? and direct other questions relating to the Parliament, must of necessity be decided."

10. *Id.* *Id.* fol. 27. The very lower end of this file, there is an action brought against Mr. Knapp, for letting a Burgess of Parliament go at large by writ *ad prohem* in Parliament, who was in execution: The Lord Dyer says nothing there, what became of it, but Sir Francis Alder, in his *Rep.* fol. 57, at the lower end of this file, reports, that it was held by Dyer, that if one condemn'd in debt or trespass be taken into the Parliament, and after taken in execution, that he shall not have his privilege of Parliament. And, as he says, it was held by the Judges of the Law, in the case of *Ferris*; and that tho' his privilege was "not allowed," yet, (as they held) it was *waived*; which case of *Ferris* was the same here mentioned before in *Id.* fol. 275, as appears by Mr. Compton in his justification of Courts, fol. 8. b.

So that some things relating to the Parliament, the Courts of Westminsterhall must determine, and the Judges cannot avoid it, if they will do justice.

11. But some things there are concerning the Parliament, which the Courts of Westminsterhall may determine if they think fit, or they may at the discretion of the Judges depend their final proceeding, and determine the Parliament must to determine them.

12. *Id.* fol. 17. 18. It is there debated by the Judges, whether it were a privilege and legal right that pass'd in Parliament against Sir John Popham, for a rape committed by him; and as depended upon the course of the two Houses, in their transferring of Bills from one to another, & of withdrawing the Bills; and they sent for the Clerk of the Parliament and consulted with him about it, and there, *Forsyth*, Chief Justice, held the Act in question to be a good Act of Parliament; but, says he, nevertheless the matter, or question, shall wait till the next Parliament meet, and then we may be certified by them of the certainty of the matter. By this it appears, that the Judges did not disown the jurisdiction of that estate, that was so nearly depending upon the usage of Parliament, but that it belonged to them, not to the Courts; and that it was convenient to be advised by the Parliament, and to wait till then.

And Sir Ed. Coke, in his 2 *Inst.* 40. tells us, that matters of difficulty were usually advised to Parliament.

13. Some things there are that concern the Parliament, wherein the Courts of Westminsterhall must not intermeddle, but the jurisdiction belongs to the Parliament only.

By the Statute of 4 H. VIII. c. 8. tho' all in that Act that concerns one *Richard Brode* is a private Act, yet there is one clause which is a general Act, and is declaratory of the ancient law and custom of Parliament, viz. It is enacted, That all *Sworn, Assurances, Concessions, Excuses, Fines, Assurances, Pardons, Commutations, Charges, and Inquiries, at any time from thenceforth, to be made or had upon any Member, for any Debt, Fines, Pardons, or anything, or declaring of any matter, upon any Member, is deemed and treated of, as utterly void and of none effect.* This concerns none but Members of Parliament, and it provides for freedom of debates in matters that are proper to be treated of in Parliament.

The Lords, for themselves only, and for their own House, made claim of this privilege and jurisdiction, 1 R. II. 2. Sir Robert Grosse's *Act* fol. 32. but it is limited only to matters moved in Parliament, and the King allowed it in full Parliament.

And Sir Ed. Coke, in his 2 *Inst.* 15. says, That past *reverses*, the like belongs to the House of Commons: "And this is the reason, says Sir E. C. that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common Laws used in other Courts, but *judicium bonis et valentibus* Parliament."

So likewise in case of the privilege of a Member of Parliament, against suits and executions, sitting the Parliament, the Judges have refused to give their opinion, tho' demanded by the Lords; as they did in the case of *Thorp*, Speaker of the House of Commons, who was taken in execution between two sessions of Parliament, of which the Commons made Complaint to the Lords, and the Lords asked the advice of the Judges, whether the Speaker ought to be delivered by privilege of Parliament? The Judges answered, That they ought not to determine the privilege of the High Court of Parliament: the case is 31 H. VI. fol. 10. *Rolls* 2d part. 94. ca. 1. See 33 H. VI. Sir Robert Grosse's *Abridg.* new. 6.

Concerning departure from Parliament, (sitting the Parliament) and not attending according to their duty, the case seems doubtful, whether any other Court than the Parliament can determine of that offence, it seeming to be of a middle nature. For tho' it be an offence committed by a Member, and that in Parliament-time, which argues for their privilege, and against the jurisdiction of any inferior Court, especially while the Parliament sits, who undoubtedly may take cognizance of it, and punish it; Yet on the other side, when the Parliament has not taken cognizance of it, and the Parliament is risen, who should not take cognizance, if the King's suit, be punished in the Star-chamber, while that was a Court, and now in the King's Bench? And why should privilege protect against non-attendance, when the true ground of privilege is by reason of attendance. And Mr. Pender, who was a very learned Lawyer, submits to the jurisdiction, but transfers his departure, viz. the case of the Bishop of Winchester, 3 E. III. remembered by Sir Ed. Coke, in his 2 *Inst.* in his Chapter of Parliament, (as far as he reports it) from rather to be an authority against the jurisdiction of any other Court before the Parliament itself, in such case of proceeding against a Member to punish him for non-attendance: For the Bishop being impeached by original writ at the King's suit, (which I suppose was in the King's Bench) *quo vi reffit* a Parliament *per Gesta Regis*.

The Bishop pleaded *quod iure de paribus*, *et dicit, quod ipsi coram dilecto in Decretum Regem in alio Parlamento, in Parlamento tunc coram eorum* *et comitibus*, *et non nisi in iudicio*, and so Sir E. C. seems to leave the victory on Sir Ed. Coke's side, and that has been succeeded. But Sir Francis Alder, 270, 271 reports the case of the Lord Sneyd, and the Lord Abergavenny, how they were deeply fined in the Star-chamber, 4 Jac. for absenting from Parliament, as the complaint of the Attorney General, are true.

And there were then present in the Star-chamber, the Lord-Chancellor, Chief Justice Popham, Fleming, and Wray, and for precedents to justify the proceeding against them in that Court, they cite the case of the Earl of Cornwall, 4 H. III. and the Bishop of Winchester's case, (which I mentioned but now) 3 E. III. how that for departing from Parliament, without licence, their lands were seized.

* Sir John Elliot, and Donald Miller, pleaded the like Plea to the jurisdiction of the King's Bench. *Ante* p. 340.

But the objection in our case, standing in matter of *detention* of a Knight of a Shire to serve in Parliament: that no other Court but the Parliament must meddle in it, as the objection would have it.

Also, It is not imperative, therefore, to acquiesce briefly of the true jurisdiction on this matter.

Sir Robert Grosse affirm, that writs of *Summons* for Knights of the Shire to serve in Parliament, began 4 H. III. and that the advantage of Commons met in Parliament, was perfectly to lessen and curb the power of the Lords, since the daring Earl of Lancaster was slain in the battle of Evesham (which was that very year), and the Barons were totally routed by Prince Edward, (afterwards King E. I.) and K. H. III. was selected out of their bands. And as he says that opinion, it is observed, that the writ went to the Sheriff, to summon two Knights out of every Shire that is to be found upon record, as that of the close Roll 40 H. III. (the very same year) 49. fo. 10. and 14. Thus Mr. Poynt affirm, as his pretence to the Abolishment of the Records of the Tower, p. 1. in the beginning of that fol. 2nd fol. 13. b. in the middle of that fol.

But we must not be governed by Histoicks in matters of law; and therefore, without standing the declaration of Sir Robert Grosse, as Mr. Poynt's, we will presume that the House of Commons, and also, out of Knights of the Shire, who sit in the Commons Law, have a business in, and a concern, because we had no written law that does best begin any such institution.

But to come clear to the objection, and to enquire who are the proper Judges of the right of election?

Mr. Poynt, in the same Preface, fol. 14. b. in the middle of it, (as I myself have hold it, for the grant has no *facta* to the Preface.) "The King and Lords (says he) were anciently free Judges of the legality of Elections of Members of the House of Commons, till the time of King Henry VI."

And in Sir Robert Grosse's Abridgment, fol. 392. the year 1 H. IV. new. 82. at the prayer of the Commons, for King Richard, that the Commons were not only restorers, and that all judgments appertain to the King and Lords, which is set in Statute, *Grimes*, *Salsbery*, &c. such like, the which order the King would from that time to be altered.

But we know that the House of Commons is now put out of the jurisdiction of determining all questions concerning the election of their own Members; for at least, as it is order to time being abolished or excluded from sitting there. But how far their judgment is concluding to all others to other purposes, I have now no full occasion to examine; for, as has been observed, the Plaintiff in this case grounds his action upon his original right of election, and mentions the determination of the House on his side, and not only alleges that he was duly elected, but is returned by it. Defendant answers, And that tho' he was for some time hindered from sitting, by occasion of the false returns, made by the Defendant on purpose, and the election was under question by it, yet he proved it clearly to the House, and was admitted, and his election declared good; and taking it for granted that he was duly elected, he fees in the King's Bench, by this action to recover damages for the injury done him by the Defendant, for which the House of Commons could not have helped him. For so many purposes they have no jurisdiction, for they cannot examine a witness upon oath, nor can they add the parties a Jury to give damages, nor have they any power to award a trial, or to cause the sheriff to be pannel a Jury.

Obj. 3. This is an abuse of a new invention, and *provisio inofficiosa*, and never any such was brought before, that of *Red 22nd* *March*, and never had any determination.

Ans. 1. For the King's use, in the particular circumstance, but not in the main, nor in the substance; for now, in that 'tis brought by one elected Knight of a Shire against the Sheriff, for a false and malicious return of another's indictment, whereby the plaintiff was put to great expense and trouble; but 'tis not *ut sit in the general course of the action*. For nothing is more frequent than actions upon the case, where an injury is done; and damages follow; nay, 'tis very frequent for actions upon the case to be brought against Sheriffs, for mere false returns, and that where there is no malice, nor any of their great apprehensions that appear in this case.

For this I refer you to the case in *Red's* *abridg.* 1. part, fol. 99. *Grove*, *Feiler* and *Morley*, in the King's Bench, where the Sheriff of a franchise was newly removed, but tho' he were removed, took upon him to answer, but made a false answer to the Sheriff's warrant, to execute a *Fieri fac.* against an Adversary, and the Sheriff made such Returns on the Court; and thereupon an action upon the case brought against the Sheriff, and adjudged in his: And that the Sheriff at this point shall take notice who is the rightful Sheriff of the Franchise, and accept of no answer to his warrant from any other.

19 H. VI. 20. An Action upon the case against a deputy Sheriff, for *misfeasance* & *Writ*.

19 H. VI. 3k. by *Folkes*. If a Sheriff upon a *Fieri fac.* return a Jury that is insufficient to pay debts, the next sheriff to whom the debts are charged to be levied, shall charge himself with the debts, and must not return a *Nisi*, but shall have an action upon the case against his Predecessor, for his false return; yet here is no malice, but at the most a neglect, or a mistake only.

30 E. III. 7. *Bresh*. action upon the case, 67.

An action upon the case against a Sheriff for not summoning and warning a man in due time, upon a writ of *Procurator* or attachment, whereby he failed damages, 20 judgment given against him, or the like. This is at bare neglect or omission, and seems to be the least or lowest sort of injury; and yet being accompanied with a particular damage to the party, tho' without any malice on the Sheriff's part, the action will lie.

3 E. IV. 20. *Bresh* action upon the case, pl. 91 by *Dorly* and *Pige*, for a false return only.

If a *Nisi* be returned against one who has no land, *E. N. R.* 93. 31 E. III. *Fins. Abr.* *Pross* 55.

So not returning a writ of *fiscalis distringas*, which is a mere neglect and *non-fugit*, tho' there be no malice, 21 E. III. 43. *Br. Abr.* pl. 48. 5 *Rep.* 23. 6 91. 7 *Rep.* 11.

So against a Bishop, if he falsely return, that an executor has not refused the executoryship, when he was he has accepted, 3 *Lex.* 221.

So against an Ecclesiastic, 9 H. VI. 60. 21 E. IV. 23. 27.

Much more shall the action upon the case lie against the Sheriff, as the circumstances of this case are, where the return is not only false, but is

know it to be false, and he did it maliciously, with a purpose to hinder the plaintiff from fitting, and to put him to expense, and where the plaintiff has had to great a damage. And the Sheriff by his oath is oblig'd to do right as well as poor as to rich, in all that belongs to his office. 2. To do no wrong to any man for favour nor hate. 3. To disturb no man's right. 4. Truly to return, and truly to serve all the King's writs, as far forth as shall be within his cunning. And the Jury by their verdict in this case, have found the defendant to fail in every one of these clauses of his oath. And tho' the circumstances that do diversify all cases are new in this case, yet it is very frequent as to the case, to have new cases and new circumstances; and there is nothing more frequent than this variety and novelty.

Sir P. Co. says, in his Book of advancement of learning, speaking of cases criminal on law, fol. 18. says, That the narrow compass of man's memory cannot comprehend all cases, which come back flow'd up; and therefore cases omitted and new, do often present themselves, but every new case does not require a new law: for then the legislative power must be continually exercising: But tho' it differs from former cases in circumstances, yet it may fall under a general rule, or be proceeded upon by parity of reason; which is the reason of the law.

And the Statute of 17. 23. cap. 24. has made ample provision for all such new cases that fall under a general rule, but have no former writ, or writ of course, that fits it in all the particulars and circumstances. In English cases, *fresh records* in law, *fresh cases*, says the Statute, in the 18. 23. cap. 24. In the 18. 23. cap. 24. there you have the distinction of writs, *fresh records* in law, *fresh cases*, and from thence the Cause's have their name, because they have the drawing of their writs.

Some are now *Misprificals* que non sunt de iure firmiores; et de aliquo certo forma, *sed sup. in constanti servatione variatione casuum, falluntur & periculis* as are action upon the case, &c. which have not any certain form, but are upon occasion drawn by the Masters of the Chancery, and from thence are called *Misprificals*, all this is by virtue of the words of the Statute of 17. 23. c. 24. *Concordant dicit in Consuetudine de bene facienda*. 2. 18. 405. 406. 407.

And many new cases may be put, that have no parallel cases to be found in our Books, in all the particulars and circumstances be regarded, as the case, 3. Car. 1. in the King's Bench, where an action upon the case is brought against an *Apprentice*, for what he did in his office, viz. for falsely and maliciously professing one, and that in the Spiritual Court, for intemperance. This was against an officer for what he did in his office, and to which his oath oblig'd him; and this was for a thing done in the Spiritual Court, viz. the Confraternity Court at *Exeter*, and for a matter merely of ecclesiastical cognisance, viz. intemperance, whereas the Common Law had nothing to do; and this case had no parallel nor precedent before it: and yet being an injury and damage to the party professed, and done falsely and maliciously, and without colour, and for which the party injured could have no recompense in any other Court, but at Common Law, it was adjudged the action lay. This case tho' it had no parallel before it in all the circumstances, yet in many respects it is a parallel to the case before us. There is the like action against comibles for making a false proffession, *Crake Car. 467.* and the case I cited before against a *Sheriff*, 12. Rep. 138.

And for that objection and observation concerning the novelty of this action, this more may be said in answer to it; That till of late years Sheriffs have given no occasion for the like action of this; for double returns, upon elections to Parliament, have not been in ancient times.

Mr. Pym, in his *Brevia Parliamentaria Rediviva*, fol. 137. observes, that there were not above two or three calls of elections questioned from 49. H. III. till 25. E. IV. for ought appears by the returns, or Parliament-Rolls, and not so much as our double returns in indentures.

And the common law does comply with, and conform to the general opinion and genius of the Kingdom, and values what they generally esteem and value, and redresses what they value not.

Herefore an election to serve in Parliament was not a thing to be defensible, and so much sought after as now-a-days it is; and it is not the desire or seeking after it that is to be disliked or condemned, for he that desires the office of a Bishop (says the *Apology*) desires a good office; but it is the undue means used, or the ill ends for which it is desired, that makes the seeking bad.

Mr. Pym, at *supra*, fol. 486. says, 1. E. III. a writ issued to elect two Knights for the county of *Northampton*, and the Sheriff returned this answer, *omnesque comiti Northamptonie sui replebunt, and ipsi per totum Eboracensem sunt decesserunt, quod non habent unde pueri expensa ducibus militibus preficiantur, sed anglorum ad hoc levato, sumendum*.

In his fourth part of his Register of Parliamentary writs, is mentioned a Patent of exemption granted 42. E. I. to the town of *Terrington in Drom-flore*; which Patent recites in its preamble, that the men of that town never wyl to send Burgeys to Parliament, till the Sheriff, 25. E. I. *in Januario* fuisset multum retentum.

So that a malicious return to Parliament is no new thing, but has been formerly done; and as the plaintiff in this action has well said the Sheriff for returning against him with him, so I make no doubt but at the case then stood, with the general humor and opinion of the people, that the Sheriff might have had their remedy against the then Sheriff for returning them summoned.

And the Law is still the same, in that it still sets a price and esteem upon that which the people generally esteem and value.

And several cases have been put to prove, that new Statutes have given occasion to new actions upon the case, which actions could not have been sued at the Common Law; and yet those new Laws and Statutes do not give those new actions, but only occasion them.

Brevia vni. 1. 2. 3. King's Bench, Rediv. 1. 2. 3. fol. 47.

The plaintiff here brought an Action upon the case against the Sheriff of *Bedford*, for suffering 7. 4. to escape out of his custody, 7. 3. being committed by the Commissioners of bankruptcy, for refusing to answer Interrogatories, the plaintiff being one of the creditors, and 7. 3. a bankrupt; and after many exceptions taken to the declaration, the Court gave judgment for the plaintiff. And yet there was no such thing as a commission of bankruptcy at the common Law; but the common Law takes occasion

by the Statute of bankruptcy, to give such an action upon the case, which before those Statutes could not have been sued.

In like manner the common Law takes occasion by those Statutes that give the action of waste against tenant for life, or years, against whom it lay not by common Law, to give an action upon the case against such tenants, if they will not permit their Lessees to enter upon the thing demised, to view whether waste be done or not. *Crab 2. part, 478.*

Obiect. 4. That there is not one case in Law parallel to this case, for a Sheriff to be sued for returning the whole truth, and something more than the truth: tho' actions for false returns are frequent.

Ans. This is an action for a false return, and something more. That it is for a false return, appears by that allegation, that he did falsely make his return, and the Jury have found it so, and we must believe it. And it was false in this, in that he returned an Indenture pretended to be under the hands and seals of divers persons, as the greater part of the factum story, purporting the choice of another than the plaintiff to be Knight of the Shire. The plaintiff does not allege, that there ever was any such Indenture sealed by any person; but that the defendant did falsely return another Indenture, purporting the same to be made by divers persons, &c. So that we may reasonably understand it, that in truth there never was any such Indenture sealed by any but the Sheriff himself, and not by any others that were pretend to be the election. 2dly, Tho' the Sheriff have returned the whole truth, yet together with that truth he returned a falsehood; and all that was re-estimated, it could not appear which was the truth; and in the mean time the plaintiff sustained all his damage.

Obiect. 5. That the Sheriff said herein as a Judge, and therefore if he er, he is not to be sued for it, but his error may be sifted; and the Law will not suffer an agreement tending to the discredit of a Judge, Pl. nement. 2. 1. 4. and Dy. 8. 3. k.

Ans. All this is true, as to that that is a Judge of Record, in respect of the greatness of his authority, and the great trust the King and the Law repose in a Judge of Record; but the Sheriff is no Judge at all in what he acts in the election of Knights for the Shire, but is only an officer upon Record, 5. H. VI. 53. and 6. H. VI. 24. *de f. m. p. 6. b.* in some particular cases indeed, the Sheriff is a Judge, as in a *Justitia*, 6. R. 2. 12. *de f. m. p. 6. b.* and a Judge of Record, as in *Replevin*, by the Statute of *Mortm.* 13.

Obiect. 6. The Statute of 23. H. VI. c. 15. has provided a remedy against the Sheriff for any abuse committed by him in elections, viz. the penalty of an hundred pound, in case of Knights of the Shire, to the Knight injured. And it does rectify in the preamble, that a convenient remedy for the party grieved is not ordained in the former Statutes; and from hence it is inferred, that there was no remedy for the party grieved at the common Law, nor before this Statute.

Ans. I have already proved, that there was a remedy at the common Law, and before this Statute; and this Statute is an argument to prove it, for this Statute mentions a party grieved, and there could be no grief without a remedy, otherwise the Law would have been defective. And it cannot be denied, but that if there were a remedy at the common Law, this Statute being in the affirmative does not take it away, only it gives another remedy.

And for the words of this Statute of 23. H. VI. that a convenient remedy for the party grieved is not ordained by the former Statutes; this does not argue that there was no remedy at the common Law, nor does it argue that there was no remedy at all; but that there was no convenient remedy by those former Statutes, and thereupon the Statute of 23. H. VI. gives an hundred pound to the Knight injured by an undue return.

I shall put these like cases where Acts of Parliament give remedies, where yet there were other remedies before at common Law, and the party may sue for either: *Rediv. 1. 2. 3. fol. 93. 94. 95.*

A Difference is made to the Sheriff to distress the defendant in an action, and the Sheriff returns not a return, but an answer lies by the Statute of 17. 2. 3. c. 4. yet the plaintiff may well sue his action upon the case against the Sheriff, because it appears by the words of the Statute, that it is a false return. Observe the argument there used, viz.

If the action upon the case did not lie, in such case the plaintiff had not any remedy at the common Law, which was greatly mischievous; and the Statute (as is there observed) tho' it gives a new remedy, and takes no notice of any remedy that was before in the case, yet it does not refrain the plaintiff from any remedy that he had at the common Law. 'Tis there said too, a *Querra* but *Seignior Roll* has this Note upon it, that *Tr. 3. Car. 1. m. 18.* *Seignior* upon good advice, brought his action upon the case against the Sheriff of *London*, for returning too small fines against the Mayor and Commonalty of *London*.

The Statute of 17. 2. 3. c. 4. (5. E. 3. 2. 3. fol. 406. 405.) first gives an action of *assize* against the Sheriff of him that levied the *assize*; and that Statute finis (as Sir E. C. observes) to understand that the party grieved was without any remedy before; for it provides in these words, *as, ceteris non residentis quorundam auctoritate Regis fieri consuevit*: yet Sir E. C. takes notice, fol. 405. of 5. E. 3. at the lower end of that job, upon the words (as he says) *That the makers of that Act knew well that the party injured by the *assize* might enter upon the ground of the wrong-doer, not only when it was in his hands, but after it was aliened too, and abuse the nuisance, and so prevent himself of the remedy by action of nuisance given by this Act. And besides that Sir E. C. is he might bring his action upon the case, and recover damages, *non quodam modo non a causa sed ex causa*.*

Obiect. The ground of this action against the Sheriff is for making a double return. Now the declaration sets forth only one perfect return, and that is of the plaintiff's election, which the declaration says, was *procedum contra iudicem*; and it was by Indenture, under the seal of the Sheriff and Electors: And tho' the plaintiff alleges, that the late Sheriff and the Electors returned another Indenture of the election of another person, (which is the promise that he complains of) yet that appears to be no return; for it was not said, *non est Indenture sub sigillo suo*. And the Statute of 23. H. VI. c. 15. and 5. H. VI. c. 7. requires Indentures sealed by the Electors to be returned to the sheriff, which Indentures so sealed and tucked, shall be holden for the Sheriff's return.

Ans. This other Indenture last mentioned, must be understood an Indenture called, in like manner as the former; for the declaration just before mentions

ask or vote the Lord *Hastings* were not chosen by the major part of the Freeholders. If it had been said *ask or vote* the Freeholders supposed to seal the writ, never did seal the same, there had been a falsity in his misnomer part of finding in the Indenture, but his finding his two Indentures, which were really sealed by the Freeholders, at that import, whom the Freeholders of each Indenture (and not the Sheriff) say, that they are the major part, is no falsity in his misnomer part, but only deferring to judge between them, which is the major part, or more properly judging that they are both equal in number.

They object, that the matter in this question is not matter of Judgment, in so far as counting the Poll, which requires Arithmetick, but not Judgment; but certainly if it be rightly considered, it will be thought a question of Majesty is not barely a question of fact, but a question of judgment, a question of difficult judgment, there are many qualifications of Election.

1. They must have 40 s. *per annum*, their value must be judged.
2. It must be Freehold, and the Title.
3. It must be their own, their colourable and fraudulent gifts made many times on purpose to get votes, must be judged.
4. The Electors must be sufficient; here the settlement of the party must be determined.

5. There are many things that incapacitate voices, as bribery, force, &c. and many other questions arise, that are of such difficulty in debate of them, much time is spent in Parliament, and sometimes a Committee determines one way, and the House another. Is not this then a question that refers to Judgment?

They object again, the Sheriff may give an oath concerning all the qualifications, and he is to keep no further.

I answer, the Statute has given the Sheriff power to give an oath in assistance of him, but the Statute does not say that whoever takes that oath shall have a voice. Neither does the Statute 23 Hen. VI. say, that the Sheriff shall not be charged with a false return, that requires the way: to do it, although he may use such means for his direction, yet he must consider his own fidelity, and use make a false return. If a man, upon taking such an oath, give the Sheriff a special answer, or if it should be known in the Sheriff he fears false, the Sheriff must determine according to his own judgment, and not by what is forced.

It may hence be concluded, that the Sheriff, as to deciding a majority, is a Judge; and if so, my next question is, that there is the same reason he should be free from actions, as any Judge in *Wyllmote's case*, or any other Judge. Does not support the Publick, that the Sheriff should deal uprightly and impartially? Ought he not to have courage, and for that end should not the Law provide him security?

Consider his disadvantages, what a great and cruel accompany such elections; what importunity, nay, what violence there is upon him from the contending parties.

We may say, no other Judge has more need of courage and resolution to manage himself, and determine uprightly, than he. No other Judge determines in a case of greater consequence to the publick, or difficulty, than he; expose him to such actions, and an insolent Election he must have trouble; for commonly each party is confident of his success, his conduct, and his friends, that let the Sheriff return never so uprightly, the party that is rejected will revenge it by a suit, especially if he say for at Common Law, to have boundless damages, without running any hazard himself, but of the loss of his office.

If we Judge, that find ourselves free from actions, should not be tender of others that are in the same circumstances, it may well be said, *We note you, for too impudently bearing burdens upon others, but will not bear the load of them yourselves.*

3. My second reason is, because it is *aliovi* for, either to examine the right of the Election, or behaviour of the Sheriff; both which are incident, and indeed the only considerations that can guide in the Trial of such causes, if they be allowed.

It is admitted, that the Parliament is the only proper Judicature to determine the right of Election, and to censure the behaviour of the Sheriff. How then can the Common Law try a cause, that cannot determine of those things, without which the cause cannot be tried?

No action upon the case will be for breach of a trust, because the determination of the principal thing, the trust, does not belong to the Common Law, but to the Court of Chancery; certainly the reason of the case at Bar is stronger, as the Parliament ought to have more reverence than the Court of Chancery.

They object, that it may be tried after the Parliament hath decided the Election; for then that which the Common Law would not try is determined, and the Parliament cannot give the party the costs he is put unto.

Then I perceive they would have the determination of the Parliament binding to the Sheriff in the action, which it cannot be; for that is between other parties to which the Sheriff is not called: it is against the cause of Law, that the Sheriff is Judge, Decree or Proceeding between other parties should bind the interest of, or any way conclude a third person; because ought it to do here: it may be said for parties combining to represent a case to the Parliament, that the right of Election may appear either way as the parties please. Is it fit the Sheriff, who is not admitted to controvert such determination, should be concluded by it, in an action brought against him, to make him pay the reckoning?

Did the Parliament believe, when they determined this Election, that they pulled Sentence against the Sheriff, upon which he must pay *Scot & Loe*? Sure if they had imagined so, they would say, in Justice, they ought to have bound his defence, before they determined it.

And yet that was the measure of this case, the Sheriff was not bound in Parliament, indeed he was more blamed there; and yet upon the Trial, which concerned him so deeply, he was not allowed to defend himself, by showing any minority or equality of votes, the Parliament having determined the Election.

I do not by these reflections tax the Law of Injustice, or the course of Parliament of Inconsequence; I am an admirer of the methods of both: it is from the Excellency of them, I conclude this Proceeding in this new-fangled action, being absurd, unjust and unreasonable, cannot be legal.

To answer the other branch of this objection, I say, it does not follow, that because the Parliament cannot give costs, therefore this new-fangled action must lie, to help the party to them.

For then such an action might as well lie in all cases, where there is a wrong, to be remedied by course of Law, and no costs are given for it.

At the Common Law no costs were given in any case, and many costs remain at this day, where the Statute have given no costs: as in a Prohibition, *Sive fines*, and *Quare impedit*, and divers other cases; and yet no action will lie to recover these costs, and why should it lie in the case at Bar?

In this case the Parliament have already had in under their consideration in the Statute 23 Hen. VI. and have appointed what shall be paid by the Sheriff that offend, viz. 100. to the party, 200. to the King, and imprisonment; the Parliament have found what shall be paid for computation, and what for punishment, and would have provided for costs, if they had thought fit.

3. My third reason is, because a double return is a lawful means for the Sheriff to perform his duty in doubtful cases.

If this be so, then all aggressions of *falsity*, *malice*, *fit* *intention*, will not make the thing actionable, for whatever a man may do for his safety, cannot be the ground of an action.

There is sometimes *Domus assidue incurs*, though the thing be done on purpose to bring a suit upon another, without any design of benefit to himself, as if a new house be erected contiguous to my ground, I may build anything on purpose to blind the lights of that new house, and no action will accrue, though the malice were never so great; much less will it lie, when a man acts for his own safety.

If a Jury will find a special verdict; if a Judge will advise and take time to consider, if a Bishop will delay a Patron, and impanel a Jury to inquire of the Right of Patronage, you cannot bring an action for these delays, though you suppose it to be done maliciously, and on purpose to put you to charges; though you suppose it to be done *finiter*, knowing the Law to be clear, for they take but the liberty the Law has provided for their safety, and there can be no demonstration, that they have not good designs, for theirs are within their own breasts; it would be very unbecomingly, that a man might not have leave to doubt without too great pain.

The course of Parliament makes out the ground of this reason to be true in fact, so that a double return is lawful when the Sheriff doubts; for if the Parliament did not allow a double return in doubtful cases, they ought never to accept a double return; if it were in itself a good and lawful return, they ought not to enquire it was not, but find for the Sheriff, and compel him forthwith to make a single return. But we see where there is doubt, the Parliament sends out for the Sheriff before they have examined the case, and given particular directions.

And if it must of necessity be the course for the Sheriff to suppose the votes are equal, and the Election is void for force, suppose the Sheriff doubts upon the validity of some votes, shall he transmit his doubts generally to Parliament? Was there ever any such thing done? Was there it of any other way but to make a double return, and leave it fairly to the decision of Parliament?

It was said by my brother *Ellis*, that if the Sheriff had returned, in the nature of a special verdict, the special matter, and had concluded in this manner, viz. if the Parliament shall adjudge Sir Samuel Barnardiston to be chosen, then he returns him; and if the Parliament shall adjudge the Lord *Hastings* to be chosen, then he returns him; that such a return as this had been free, and could not have borne an action.

This is a pretty invention, found out for argument sake, but methinks it furnishes too force at all in the matter for which it is brought, but rather shows the right to be the other way: for let any man of common sense, make a double return, as it is now said, he is not the same thing consequence? It is not a double return, as if the Sheriff should say to the Parliament, "The right of Election is between these two, I am in doubt which of them I shall reject, and expect your direction." This is the import of a double return, and is the same in effect, as if it had concluded like a special verdict; and so my brother *Ellis's* instance should not be actionable, though he concluded otherwise.

That other new-fangled way could not be received, viz. For,

1. The Freeholders would never give in such a return.

2. It is a return it is not capable of being concluded by the Sheriff.

But the judgment of the Parliament must be entered upon record, to make it any return, it concluding nothing at all, as a special verdict concludes nothing, till the judgment of the Court be entered upon the roll with it.

3. The Parliament will not, as I believe, admit of new devices in the course of their Proceedings, whatever we do at Law.

But the double return is practicable in the County, for the Freeholders of each part will under their Indentures; and it is easily amended in Parliament, by rejecting the Indenture of those Freeholders that were not the major part, which way has been practised in doubtful cases for many years.

So that I apprehend the case at Bar to be more repugnant and favourable, than that case, which my brother *Ellis* put as a case that would bear an action.

Again, suppose the Sheriff had informed the Parliament of his doubts, and that he could not readily determine where the majority was, but it was between two persons, *A* and *B*, and therefore desired their favour, either to grant him time to determine it, if they pleased to command him to do so, or else, that they would decide it themselves, and he would obey what directions they should make in it, and thereupon the Parliament had taken upon themselves to determine it.

This must clearly be not an actionable, for it is not actionable to delay a return to any Court of Justice, where the Sheriff had leave from the Court to do so.

A double return, in any understanding, speaks the same thing to the Parliament; and upon it they may either direct the Sheriff to make a single return, which is to cause him to decide it, or they may do it themselves.

And here, I must needs reflect upon the second reason I gave against this action, that the matter of it is *aliovi* for, I find myself and my brothers that argued for the action, engaged in a *discovery* of the nature of a double return, and the course of Parliament upon it, which, as a Judge, I cannot so well speak to. I had the honour to be of this House of Commons, and whilst I was there, I considered

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filled as well as I could the course of the Proceedings of the House, and am therefore able to speak something of them, and I am brought into this discourse necessarily by this action: but I must needs say, it is an improper discourse for Judges, for they know not what is the course of Parliament, nor the privilege of Parliament. When the Lords in Parliament, whom they are bound to assist with their advice, ask the Judges any thing, concerning the course or privilege of Parliament, they have answer'd, that they know them not, nor can advise concerning them.

If in Parliament we do not know, nor can advise concerning these things; how can we judge upon them out of Parliament? We ought to know better as judges, and therefore we cannot judge of things we cannot know.

Our being engaged in a discourse improper for Judges, shews the action to be improper, as much as any other argument that can be made; and this argument arises from my brother's charge against the action.

But now I am at this discourse, I must go a little further; my observation from the course of Parliament has been, that they will not permit the Sheriff to delay his return, to deliberate, and he cannot take security of either party; and if a single return be not justified by the Committee of Elections, he is in danger of the Statute of 23 Hen. VI. It is plain, that there is no way for an incorrect Sheriff to be safe, where he comes in doubt, but making a double return; and if that should be admissible too, the favour of the Parliament would be the most agreeable service in the world.

It seems admissible to me, that it should be objected, that this course of Law is necessary to prevent the great mischief arising from double returns, whereas, if it be a mischief, or difficult by the Parliament, either in general or any particular case, they may reject them when they please, and command the Sheriff to make a single return; so that they may remedy it by their practice, without their Legislative Power.

Their practice hitherto has been to receive double returns, which therefore in some cases must be lawful, and in the very case the double return was accepted, and the Sheriff no way punish'd for it; which he ought to have been, if it had been blameworthy.

If double returns are accepted by Parliament, they are allow'd, and we must say they are lawful, which is the ground of my third reason; for which I hold this action not maintainable.

4. My fourth reason is, That there is no legal damage occasioned by the Sheriff. The damages laid in the declaration are,

1. Being kept from sitting in the House.

2. The pains and charges he was put unto, to get his election into the House.

3. That of his being kept from sitting in the House, is as much every man's damage in the whole County, nay, in the whole Kingdom; and any man who sits will have an action for it, as the Member chosen.

As fit in Parliament is a service in the Member, for the benefit of the King and Kingdom; and not for the particular profit of the Members.

It is a rule in Law, that no particular man may bring an action for a nuisance to the King's highway; because all the men in England might as well have actions, which would be infinite; and therefore such an offence is punishable only by Indictment, except there be special loss occasion'd by that nuisance.

For the same reason, the exclusion of a Member from the House, being as much damage to all men in England, as to himself, he, nor any man else in England, can have an action for it, but it is punishable upon the publick house, and not otherwise.

For this reason was the Statute of 23 Hen. VI. wisely consider'd: by that Statute the action is not given to the party for his particular damage, but the action given is a popular action, only the party griev'd hath a preference for six months; but if he do not sue in that time, every man else is at liberty to recover the same fine.

2. The other point of damage, is the pains and charges he was put unto, and that is not occasion'd by the Sheriff, but by the deliberation of the House. Why should the Sheriff pay for that? It may be, if the Parliament had sent for the Sheriff the first day, and blamed the double return, he would have usur'd to determine the matter speedily, and then should have been no cause of complaint for delay: but the Parliament flow so much cause of doubt, that they think it not fit to put the Sheriff to determine, but to resolve to examine the matter, and give him direction that may guide him in sending his return, thereupon they give a day to the parties on both sides, and sending the matter of long examination, and withal difficult, they deliberate upon it.

It seems very unreasonable the Sheriff should be made pay for this, which he did not occasion; but was a course taken by the Parliament for their own satisfaction, who found no fault in the Sheriff for putting them to all that trouble.

Suppose Sir Samuel Bernardin had been return'd alone, and the Lord Hunsdown had petitioned against that return, there had been the same charge to have defended that return; so that it was the cost of the opposition party that occasioned the charge, the deliberation of the Parliament that occasioned the delay; but neither of them can be imputed to the Sheriff.

I cannot differ this case, from the case of bringing an action against a Jury, for malconduct, knowingly, and on purpose, to put the party to charges, finding a mistere specially, whereby great delay and great expences were, before the party could obtain judgment; and yet I think no man will affirm that an action will be in that case.

In this case the damages are found entire, so that if both parts, viz. the one suing in the House, and the pains and charges are not admissible causes of damages, it will be intended the Jury gave for both, and so the judgment is for that cause erroneous.

I suppose the voices of Parliament will not be mentioned for damages, for in most places they are only imaginary, being not demanded; but if there were so any consideration of them, it will not alter this case; for upon this return they are due as from the first day, and so no damage can be pretended against that return.

5. My fifth reason is taken from the Statute of 23 Hen. VI. which has been so often mention'd, that Statute is a great evidence to me, that no action lay by the Common Law against a Sheriff, for a false return of a writ of Election to the Parliament; and this evidence is much strengthened by

the observation that hath been made, that never any action was brought otherwise than upon that Statute.

I must admit, that if an action lay by the Common Law, this Statute hath not taken it away, for there are no negative words in the Statute; but it is not likely that the Parliament would have made that Law, if there had been any remedy for the party before.

The Statute observes, that some Laws had been made before, for preventing false returns, but there was no convenient remedy provided for the party griev'd; and therefore give him an action for 100 l. If the Courts of Justice had, by the Common Law, jurisdiction to examine misfeitures, not concerning the returns of Sheriffs to the Parliament, what needed the Parliament to be so elaborate, to provide Law after Law, to give them power therein, and at last to give the party griev'd an action? Can any man imagine but that the Parliament took the Law to be, that the party was without remedy? I know preambles of Acts of Parliament are not always useful; but it becomes us, I am sure, to have respect to them, and not to impose any fault or failing to them, especially where oftentimes usage speaks for them.

If it has been objected, that in those times, it was reckoned a damage to be return'd twice in Parliament, which is the reason that as soon then did bring his action against the Sheriff for returning another in his stead. This cannot be true, for the Statute calls him the party griev'd, and is careful in providing convenient remedy for him; and we see by the many Statutes about those times, that it was a mischief very frequent, and there wanted no occasion for these actions; which does extremely strengthen the argument of the non-use of this pretended Common Law.

An action upon the case, where it may be brought, is a plaister that fits it for all times and all cases; and if such an action might then have been brought, there was no need for the Parliament to provide a convenient remedy.

By *Littleton's* rule, often mentioned by my brothers, we may conclude this action will not lie; for if such an action had lain, it would have been brought before this time.

In the case of *Buckley against Rio Thomas*, in *Plowden's Commentaries*, 128, which appears to be so elaborately argued both at Bar and Bench; if this Common Law had been thought upon, they might have prevented the question, whether the Sheriffs of *Wales* were bound by the Statute of 23 Hen. VI.

It seems plain to me, that the makers of the said Statute were ignorant of this Common Law; and yet my brother *Tharold* observes, the Judges, in those times, actually assisted in the passing of the Laws.

The Judges and Counsel in the case of *Buckley's* case were ignorant of this Common Law, else it would have been mention'd in the argument of that case.

This Common Law was never reveal'd, that I find, until a time that there were divers other new lights. I mean those times, when *Mum* brought an action for a false return against *Straw*, during the late troubles; but in those times it could never obtain Judgment. I have heard that the Court of *Common-Places* sent the Record to the Parliament, as a case too difficult for the Courts of Common Law to determine.

The Statute of 23 Hen. VI. is not only evidence, that no such action lay at the Common Law; but, in my opinion, is not consistent with any remedy at the Common Law, unless it be allowed that the party should be doubly punish'd.

If the party griev'd has brought his action upon the Statute, and recover'd, it was admitted by the Counsel, that no action can be brought at the Common Law; nor a return, can be recovered by the Statute, after he has recover'd by the Common Law, because *Nonnulli poſſunt per actionem debere*.

So far it stands well; but suppose the party griev'd has let his time of three months, and then a third petition brings a popular action, and recovers 100 l. upon the Statute; there is nothing on bill but the party griev'd from his action at Common Law, for his letting bill will not conclude him; so Statute of Limitations extending to this case. And if it be so, then must the party, besides his Fine and Imprisonment, be doubly punish'd by this Statute; which was made, as the Letter of it imports, because there wanted convenient remedy.

And now I am discoursing of this Statute, I must observe the great wisdom of the course of Parliament in these cases, which hath in great measure prevented the bringing of actions against Sheriffs, even upon this Statute.

Where the Sheriff mistakes the person in his return, he incurs the penalty of 23 Hen. VI. tho' it be without malice; and it may happen that any where there are 21 Electors of one side, and 20 of the other, the Sheriff returns him that hath 21, and the Parliament adjudging an incapacity in two of the 21, may determine he that had the 20 voices was duly chosen.

In such case the Sheriff had made a false return, within the penalty of the Statute of 23 Hen. VI. and no evidence shall be given against the determination of the Parliament.

This was a very hard case for the Sheriff, and if we were liable to such a mischief, many a pait Sheriff might be awaken'd, that takes himself to be secure.

But the course of Parliament prevents this, as it is reason, for immediately upon their determination, they send for the Sheriff, and call him to amend his return; and there is no record that can warrant any action to be brought for a false return: as when the Marshal of the King's Bench or Warden of the Fleet have made an improprietor return, contrary from causes where-with the Prisoner stood charged in their custody, whereby they became liable to action, they frequently move the Court to amend the return; and when the return is amended, all is set right, for there is no averring against a Record; in like manner, when the Sheriff hath amended his return, he is secure from any action upon that occasion.

By this means, there has of late years been no recovery upon the Statute, because all persons chafe rather to compel the Sheriff to amend his return, than they might be admitted to sit in the House, than to take their remedy upon the Statute, and no man can recover upon the Statute first, and afterwards their return amended: for I have been told, that by the course of Parliament, unless the Petition be lodged within some few days after the return, it cannot be received afterwards. So that a man cannot upon that

Statute

Statute here remedy at Law, and also in Parliament: which seems to be wisely provided, to prevent any contrivance of determinations.

The Statute of 23 H. VI. furnished those that argued for this office, with some argument, which doth now vanish: They said that all the inconveniences that could be objected to this addition, were the same upon the Statute of 13 H. VI. viz. That upon that Statute, the right of election must be examined upon a trial, where there might be a contrivance of determinations: for it appears by what I have said, that there can be no contrivance of determinations.

And there are other inconveniences in this remedy by the Common Law, which are not in the remedy given by the Statute, for by the Statute the time to be recovered is limited; the Informer hath time prescribed, for that there are bounds set which cannot be exceeded: but the remedy by the Common Law is without limitation of time, which is considerable; for all Sheriffs that ever made any return otherwise than the Parliament determined, will be liable, during their whole lives, to them that will call them to account for it. I say, this is without limitation of time, without measure of damages, or any rules contained in a written law: It depends upon a general notion of justice, which may be enlarged by construction, as it is now introduced without precedent.

To finish my observation upon this Statute, I say it is great wisdom in the Parliament to call the Sheriff to answer the return, and to prevent any remedy against him upon the Statute 23 H. VI. for I do not see that the rules of law concerning elections, are so manifestly clear and known, that it is fit that the Sheriff should, upon all returns that are corrected by the Parliament, pay the reckoning of the costs.

6. I have a third reason against this addition, which is, because the Sheriff is not admitted to take security to save him harmless in such cases; I take this reason to be *iniquitous*, and there needs no other in the case.

It were the most unreasonable and grievous thing in the world, that the Sheriffs should be bound to act without any deliberation, and not to be allowed to take any security, and yet be liable to an action, which way favour he takes: There is no court can avoid it but this of a double return, as I have before shown.

It has not been said, by any that argued the other way, that the Sheriff may take security, and, I suppose, will not be said, for it would be a dangerous course for Parliaments, for then the most ingenious man must be returned, and not be who is truly chosen.

If the Sheriff may not take security, the law must be his security. It was an argument used by my brother Ellis, That because the law imposes an officer, to wit, the Sheriff, therefore the law must give the party an action against that officer, if he misbehaves himself: The argument doth not hold universally, for the law imposes a Judge, and yet no action lies against him. But the reason of that argument, if turned the other way, is striking; for, as thus, The law will not suffer the Sheriff to take a security, therefore the law must be his security, else it were a most unreasonable law. This reason of itself is sufficient to bear the whole case, for no case can be put in our law, nor, so safe can he in any reasonable law, where a man is compelled to judge without deliberation, and cannot take security, and yet shall be liable to an action.

I have two more reasons to add, upon which I lay great weight, they depend not upon any particular circumstances of this case, but the general consideration of it.

1. That it is a new invention.

2. That it relates to the Parliament.

As it is a new invention, it ought to be examined very strictly, and have no allowance of favour at the end; and it will have the first feature that many other novelties, heretofore attempted in our law, have had.

Actions upon the case have sometimes been received in new cases, where it stands with the rules of law, and no inconvenience appears; but they have been more often rejected. I shall instance some cases that have been rejected, because it will be manifest by them, that all the arguments and positions laid down by my brother that would support the action, are as well applicable to several cases that have been already rejected, as to the case at bar.

An action upon the case was brought against a grand-jury-man, for falsity and maliciously conspiring to indict another, and adjudged it would not lie.

Against a witness for testifying falsely and maliciously; and an action was brought against a Judge, for adding falsity and maliciously; but adjudged that no action would lie in these cases.

I have three instances to add, as very argument urged for this action. The arguments my brother made in defending falsity and malice, which they made from the comparison of other actions upon the case of *misnomer*; the argument, that because the law imposes the office, it will punish the malice, has the same force in the case of a Judge, Juror, or Witness, and yet my brother admits in those cases, an action will not lie, which shows the invalidity of these arguments.

Now I shall give other instances where actions upon the case have been rejected for novelty and notions of inconvenience.

An action of the case was brought against the Lord of a Manor for not admitting a copy-holder, and it was adjudged it would not lie. *Case 368.*

There was a verdict found, and damages given by the jury in that case: The Lord is compellible in Chancery to admit a copy-holder, and what harm would it have been, if there might have been a remedy given by the Common Law, there being a truer broken by which the Lord was bound? The reason of the books now, because it was a novelty, and it would be vexatious, if every copy-holder should have an action against the Lord, when he refused to admit him upon his own terms.

It has been adjudged, that an action upon the case will not lie for the breach of a trust, because the Common Law cannot try what a trust is; but if such actions were allowed, the law might declare that to be a trust, which the Court of Chancery, that properly judges of trusts, might say it is not; so, when the Court of Law cannot examine the principal matter, the damages that we are but dependent upon shall not be regarded.

At my brother's argument in *the case of Sir W. Soame*, for maliciously killing Sir Th. Wentworth, the case was this. The plaintiff was a young

lawyer that had expended all his gains in the purchase of a rent that was determinable upon the death of Sir Th. Wentworth; Sir W. Soame quarrelled with Sir Th. Wentworth in the streets, about a mistress, and killed him, whereby *Madjion* lost his rent. It was held the action would not lie, though it were said to be done maliciously, on purpose to determine the plaintiff's rent.

I observed in that case, that although Mr. *Madjion* knew very well that there was a mistress in the case, and that the rent was not aimed at, yet he would find try his fortune in the suit; thinking that a jury, perhaps, out of compassion to him, or to discourage the like facts, might make the malice pay him for his loss: but the Judges would not suffer it to go on, it being a mere device and a new-fangled action.

It has been held, that an action will not lie against a Parson for suing for tithes in-kind, knowing that there was a modus, because it might then be perilous for any Parson to insist upon his right.

It was held by the Court of Common-Pleas, that no action will lie for suing an Attorney, knowingly, in any other Court against his privilege: for his means to enjoy his privilege, is to claim it by way of privilege; and he is not bound to claim his privilege, nor can his adversary know he will claim it.

An action was lately brought in the *King's Bench*, (as I have heard) for detaining a post-learned man, whereby the plaintiff wanted information that might have been of great advantage to him. The Court distinguished the case, so that it proceeded no further. It was then said (as I heard) to this effect. That if such precedents were admitted, there could hardly be any dealing or correspondence, but might be matter for actions at law. And although the case depended upon proof of particular malice, and the defendant will be acquitted if his case be not odious yet we must consider that there is both charge and vexation of mind that attends the defence of a just cause, and we must not subject men for their actions to such trouble and hazard.

These instances show, that although an action upon the case be often a contrivance, yet when actions have been in new cases, they have always been strictly examined, and upon considerations of justice or inconvenience they have been many times rejected.

For though the law advances novelties, as my brother observed, yet it is with consideration that vexation be not more advanced than necessity.

In my opinion, that no new device ever was, or can be introduced into the law, but abundantly difficulties arise upon it, which were not foreseen, which makes me very jealous of admitting novelties. But,

2. In matters relating to the Parliament (which is my second ground) there is no need of introducing novelties; for the Parliament can provide new laws to assert any misdeeds that arise, and it ought to be left to them to do it.

Especially in a case of this nature, concerning elections, which the Parliament have already taken care of, and prescribed remedies by the several Statutes that have been made concerning them; I say, in such a case, there is little need to bring the law.

The Judges in all times have been very tender of meddling with matters relating to Parliament. I do not find that ever they tried elections, but where Statutes give them express power; or that they ever examined the behaviour of a Sheriff, or any officer of the Parliament, in relation to any service performed to the Parliament, but upon those Statutes: As in *Bromley's case*, *Dyer* 168. The Statute was their rule in the *Star-Chamber*, and they inflicted the same punishment that is appointed by that Statute.

If we shall allow general remedies (as an action upon the case) to be applied to cases relating to the Parliament, we shall at last invade the privilege of Parliament, and that great privilege of judging of their own proceedings.

Suppose an action should be brought in time of perjury, against a Member of Parliament, for that he falsely and maliciously did exhibit a complaint of breach of privilege to the Parliament, whereby the party was sent for in custody, and lost his liberty, and was put to great charges to acquit himself, and was acquitted by the Parliament.

If upon such a case the jury should find the defendant guilty, why should not that action be maintained as well as this at bar? It may be said for that action, that the judgment of the Parliament is followed, and the privilege is not tried at Law, but determined, 1. In the House, 2. It may be said, the party has no other way to recover his charges.

It would be dangerous to admit such an action, for then there would be peril in claiming, any degree; for if the party complained of, had the forfeiture be acquired by the House, the Member that made the complaint would be at the mercy of the jury as to the point of malice and quantity of damages. Such a precedent, I suppose, would not please the Parliament; and yet it may with more justice be the second case, than this at the bar the first.

Actions may be brought for giving Parliament-privileges wrongfully. Actions may be brought against the Clerk of the Parliament, Sergeant at Arms, and Speaker, for ought I know, for executing their offices on, with assaults of malice or damage: and then such Judges and Juries determine what they ought to do by their offices. This is in effect prescribing rules to the Parliament for them to act by.

It cannot be feared whether we shall be drawn, in we meddle with matters of Parliament in actions at law. Therefore, in my judgment, the only safety is in those bounds that are warranted by Acts of Parliament or constant practice.

Suppose this action had been brought before the election had been decided in the House, and the jury had found one way, and the Parliament had determined contrary, how inconsistent had this been?

But it was said in the *King's Bench* that the Court would not try it, before the Parliament had determined the election, and then that cannot be contended, but the judgment of the Parliament must be followed. And my brother Ellis has now said, hardly he can well be so indiscreet as to bring such an action before the Parliament had determined it, and the Court will not try it, before the election at the election is determined in a proper way. In my opinion, this was not rightly considered, for how can the Court say any thing, to expect the determination of the Parliament? And what reason or force is there, that the Sheriff, who is no party called to answer in the Parliament, should be concluded in any thing by a judgment between other

other parties, to defend himself from a demand of damages in a Court of law, where witnesses are examined upon oath, which they cannot be in the Common House?

There is no reason the fate of law should stay till the House have determined the evidence, if the determination of the House be not conclusive in that case.

And for the discretion of the parties, that are like to bring such actions, I cannot depend upon it. If I live in this age, some men will insist upon their private right in the hindrance of publick Affairs of higher consequence than any that can come before the Courts in *Widdow's* Hall.

It may be, they will not want men that will peruse us to judge in such cases; and not only before the Parliament have determined, but against what the Parliament have determined; and will tell us, that the Sheriff was no party, that witnesses were not there examined upon oath, and produce Arguments from Antiquity which we shall be very loath to judge of.

I can see no other way to avoid consequences derogatory to the honour of the Parliament, but to reject the action; and all others that shall relate either to the proceedings or privilege of Parliament, as our Predecessors have done.

For if we should admit general remedies in matters relating to the Parliament, we must first consider how far they shall go, which is a dangerous province; for if we err, privilege of Parliament will be invaded, which we ought not any way to endanger.

This I speak of general remedies. Now I will consider this particular case, which, in my opinion, would bring great danger and dishonour to the Parliament.

It is dishonourable to the Parliament that there should be no protection in their service; I have shewn that the Sheriff can be safe in no case, if he shall be sued in such a case as this; And can there be a greater reproach, than that there is no safety in their service? Nobody can serve them cheerfully and willingly at this rate.

It has been objected that the Sheriff is not their officer, but is the officer of the Court of Chancery, which sends forth the writs, and receives the returns. The Argument is plausible, but will not pass in the Parliament; for they say the Court of Chancery is the Repository for their writs, but will not allow them to stay without warrant from the House: They will not suffer the Court of Chancery to meddle with the persons of the Sheriff. The Parliament sends immediate orders to the Sheriff, if the return be too slow, they desire the Sheriff to amend his return, and they punish the Sheriff when they find him faulty; so that it appears they exercise an immediate jurisdiction over the Sheriff. And I suppose they would judge it very false doctrine to say, that the Court of Chancery, or us, can any way meddle with the returns or the officer.

Admitting the Sheriff to act in returns as the Officer of the Parliament, it seems to me that he should be liable to no other punishment but what they inflict, otherwise they cannot expect to be obeyed.

To have others judge when their servants do well, will be to have others give rules to their servants and service, which they will think inconsistent.

Let it be considered how hard a task Sheriffs have in the elections of Knights to the Parliament: The appearance commonly is very numerous, the parties contending very violent, the proceeding tumultuous, the selling sometimes is at several places at once; so that the Sheriff can hardly be a witness of the action; and if the dispute be in the House of Commons, he is in no party to it. If after all this, the Sheriff, who cannot indemnify himself by security, shall be liable to an action, the service of the Parliament may be reckoned a miserable slavery, which is not for the honour.

As this is dishonourable, so it is dangerous to the Parliament; it concerns the Kingdom that returns to the Parliament should be upright and impartial, and that they may be so, the Sheriff should be secure from all suits.

Judges are not liable to actions, that they may proceed uprightly and impartially; if they were subject to suits for their judgments, there is that selfishness and confidence on both sides, that one side would be dissatisfied and trouble them, and they could not discharge their duty without apprehensions of disquiet.

If the Sheriff be exposed to actions thus, let us consider what and whom he is to fear. He may fear the suit of the party, and he may fear the suit of the King. And it follows necessarily, that if an action lies, an information for the King will also lie for the misdemeanour in his office: If it be not a safe privilege by the complexion of it, as *Parliamentary*, from being examined in *Widdow's* Hall, but that he may be punished at the suit of the Party, he may certainly as well be punished at the suit of the King: If so, Where is the Sheriff's security? Will his own innocence secure him? That must be used by a jury of the County where the Parliament sits, who are, it may be, strangers to him as well as to the matter; or by a jury of the County where the election was, where, it may be, they will be of an opposite party; the plaintiff may wait his opportunity, and question him twenty years after: And if he be condemned, his punishment is unlimited, a fine may be set to any height for the King, and damages may be given to any value for the party. Where is his security upon such proceedings? Will he not be more afraid of such punishment out of Parliament, than of any punishment in Parliament? Will not, say, may not his terror make him desire to please them that can punish him out of Parliament, rather than to do right? Will not that be dangerous to the constitution of Parliament?

As the punishment out of Parliament may be a terror to those who mean well, so colourable punishments may be as mischievous on the other side; for they may prevent any punishment in Parliament, for *non pro puniunt pro evadit delicta*; they may serve for protection of men that do ill. When it is seriously weigh'd, of what consequence this may be, the case at Bar will not be thought a case fit to be received by the Judges without the concurrence of a new law.

They object, there is malice found by the verdict, and that there can be no danger or inconsistency that malice should be punished. This objection fortifies my opinion; for malice, upon which they would have the scales turn in this case, is not a thing demonstrative, but interpretative, and lies in opinion; so that it may give an handle to any man to punish another by.

The influence of this very case shews, that a good man may reasonably be afraid of the event of his defence in such a case.

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For altho' the matter was of great consideration in Parliament, and at last decided by a few voices, and an obliquation of the Sheriff's misdirection there; sho' it appeared upon the trial (which I may say, being present there), that the Sheriffs were guided by the advice of his friends of Council, and of Parliament-men, that told him the only safe course was to make a double return; yet the Jury condemn'd him to pay *fool*, against the expectation of the Court: For the Judges that were present at the trial did all declare publicly, that they would not have given that verdict.

The Jury heard all the evidence the Jury could see upon, for being of a remote County to the place of election, the Jury could know nothing of their own knowledge, and yet the Judges concern'd not with the Jury in their opinion.

I know we are not to examine the truth of the verdict, we must take it for gospel, neither doth any partiality in this particular lead me in judgment; but I drew it as an instance that malice is not demonstrative; men's minds may be mistaken, and innocent men may therefore have reason to be afraid, especially in ill times, and may use such means for their safety as may not be convenient for Parliament.

But there can be no danger or an inconvenience in the tenure of the Parliament, that represents the whole Kingdom, who hitherto have done, excus'd this power, and who may at any time reform the law, if the present practice be by any way inconvenient.

Upon these reasons which I have produced, I ground my opinion: Now it will be necessary to weigh what hath been said as apposition to it.

The Arguments urged on the other side, relate either to the ingredients or circumstances of this action, or to the foundation or substance of it.

I call the ingredients and circumstances of the action, that is a laid with these words, *Falsely, maliciously, detestably, &c. fincer*: And that there is a verdict in this case, and damages are found.

The words *falsely, maliciously, & detestably*, will sometimes make a thing actionable, which is not in itself, without malice proved, tho' there be the same damage to the party.

As when a man causes another to be falsely indicted, yet if it be not malicious, no action lies; tho' there be the same trouble, charge and damage in one case as the other.

But it is only where a man is a voluntary Agent; for if a man be compellable to act, you cannot molest him upon any agreement of malice: As if a grand-jury-man causes another to be indicted, tho' you ever malice, you cannot have an action against him, so far a witness that doth testify, or a judge that judgeth.

In the case at Bar, the Sheriff is compellable to act, and not barely as a Minister to find the indictment, but as a Judge to try which is the major part of the due Election, and if he misdotes, there is no reason it should subject him to an action upon an artificial agreement of malice.

As when a man causes another to be falsely indicted, *Bank, Mr. Justice Bingham* said well, that the words *falsely & maliciously* were given words of course, and put into every action: So that to his knowledge James many times had no regard to them, that he looked upon them as words of form.

If we should make the words *falsely & maliciously* support an action without a fit subject matter, all the actions of mankind would be liable to suit and vexation: They that have the coming (as we call it) of declarations in actions of the case, if they be faulty in their art, will be sure to put in the words *falsely & maliciously*, lest the case be what it will, they are here proper and singular in a Court's hand, that help to make havoc for any man, but will use make a dith of themselves.

For if a man shall use malice in an action against a Judge.

Not against an indolent or weakish, nor where words are not actionable, tho' the plaintiff hath a verdict and damages found; nor for a breach of trust, which is also false.

The reason of every one of these cases holds in the case at Bar: Therefore it ought to have the same Retelation.

As to the word *fincer*, it hath many significations; and if an action be brought for keeping a dog that worried another's sheep, *fincer* means an *unlawful* man's eye, *unlawful*, so for detaining the servant or wife of another, *fincer*: In these cases, if the defendant hath been told that the dog did worry sheep, or that it was the servant or wife of another, tho' it may be he did not believe it, yet it was *fincer*; for the word implies no more than having notice: And in those actions he must declare himself as his proof, and may, if he doth, and danger by putting away those things which give offence. But in this case he could receive information by none, and is not to believe or deliberate any body, but is bound to judge of the thing himself, and so act according to his judgment; so that no proof could be made of the *fincer*, for one side tells him the Election was one way, and the other side tells him it is the other way; but he being present to the whole action, must follow the dictates of his own judgment. Hence it appears, *fincer* in this case is an empty word, not relating to notice of a fact, but a matter of judgment, which cannot any way be proved.

It has been often said, that this case is stronger by being after a verdict and damages found by the jury, and it has been said, that perhaps upon a direct issue, it might have been found more doubtful.

The case is the same to me upon a verdict, that it would have been upon a general demurrer, and no stronger; for a demurrer is the confession of the party, of all that can be proved, or can possibly be found upon that declaration.

It is my Lord Chief's advice in *Cromwell's* case, 4th part, 24. a. moves to demur to a declaration, if there be any hopes of the matter of fact, for the matter in law will well serve after a verdict as upon a demurrer.

It had been a very odious case, if the Sheriff should have admitted all this fact to be true by a demurrer.

The finding the Plaintiff's damages adds no strength to the case; for we see every day upon actions for words, tho' the Jury find the defendant guilty for saying words *falsely & maliciously*, and find it to be so in the Plaintiff's great damage; yet if the words are not such as will bear an action, the Court stays judgment; and if judgment happens to be given, it is reversible for error, which shews that the finding damages by the jury cannot make an action better than if it were to be adjudged upon demurrer.

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I shall now consider what hath been said to maintain this action upon the main substance and foundation of it. They say, this is a case within the general reason of the Common Law, for here is malice, falsity and damage; and where they concur, there ought to be remedy. And altho' this be a new case, yet it ought not for that reason to be rejected; for other kind of actions have been newly introduced, and this is as fit to be entertained as any.

My brothers that argued even now for the action, showed great learning and great pains, and certainly have said all that can be urged in support of this case: But as for as I could perceive, they have spoken only upon general reasons to that purpose I just now mentioned, but nothing that I could observe applicable to the reasons and differences I go upon.

As for the rule they go upon, that where falsity, malice and damage do occur, there must be remedy; I confess it is true generally, but not universally, for it holds not in the case of a Judge, nor an Indictor, nor a Witness, nor of words that import not legal falsity, tho' they are found to bring damage, as I have shewn before. And the reasons that exempt these cases from the general rule, have the same force in the case at bar.

I must confess that Judges have sometimes entertained new kinds of actions, but it was upon great deliberation, and with great discretion, where a general inconvenience required it.

If Sir Wm's case were new (for my brother Tharold observed truly it was dead in that case, that there were infinite numbers of precedents) that case imported the common course of justice, Actions for words that are said to be new, tho' they have been said some hundreds of years, are a necessary means to preserve the peace of the Kingdom. The case of *Smith and Grylls*, 20 Car. 15. was a case of general concern, being that prosecutions for treason may be against any man, and at any time.

But in the case at bar, neither the peace of the Kingdom, nor the course of justice is concerned in general, but only the administration of officers of the Nation; as the execution of Parliamentary Writs; and can never happen but in issue of Parliament, and must of necessity fall under the notice of the Parliament; so that if the law were deficient, it is to be presumed the Parliament would take care to supply it. Discretion requires us rather to attend that, than to introduce new precedents upon such general notions that cannot govern the course of Parliament.

My brother *Adams* said, the Common Law coupled with the genius of the Nation; I do not understand the Argument: Does the Common Law change? Are we to judge of the changes of the genius of the Nation? Whether any general notions carry us at this rate! For my own part, I think, tho' the Common Law be not written, yet it is certain, and not arbitrary. We are bound to observe the laws as they are, and I fear not how we can change them by our Judgment; and as for the genius of the Nation, it will be well considered by the Parliament, who have power of the laws, and may bring us to a compliance with it.

In the case at bar, I look upon the Sheriff as a particular officer of the Parliament for the managing elections, and as if he were not Sheriff: I look upon the writ as if it were an order of Parliament, and had not the name of a writ: I look upon the course of Parliament, which we pretend not to know, to be incident to the consideration of it; so that it stands not upon the general notion of remedy in the common course of justice.

The Arguments of the filling of the value of money, whereby the penalty of 100*l.* provided by the 25 H. VI. is become incredible; and the increase of the estimation of being a Member of Parliament; if they were true, are arguments to the Parliament to change the law by increasing the penalty, but we cannot do so.

My brother *Adams*, in his Argument, would embolden us; telling us we are not to think the case too hard for us, because of the name or course of Parliament; for Judges have punished Absconders: They may determine what is a Parliament, what is an Act of Parliament, how long an Ordinance of Parliament shall continue, and may punish trespasses done in the very Parliament.

I will not dispute the truth of what he said in this, but if his Arguments were artificial, he might have feared them, for they have no manner of effect to draw us beyond my sphere.

I will not be afraid to determine any thing that I think proper for me to judge, but being I cannot find the Courts of Justice have at any time meddled with cases of this nature, but upon express power given them by Acts of Parliament, I cannot consent to this precedent; I am confident when there is need, the Parliament will defend it, and make laws to enlarge our power, so far as they shall think convenient.

I see no harm that Sheriffs in the mean time should be safe from this new-devised action, which they call the Common Law; if they mismanage themselves, they are answerable to the Parliament, whose officers they be, or may be punished by the Statute, made for regulating Elections.

It is time for me to conclude, which I shall do by repeating the opinion I am full delivered, viz. That this judgment is not warranted by the rules of law, That it is a breach of novelty of dangerous consequence, and therefore ought to be reversed. *Some noviter eritis, non veteri eritis, falli.*

Norris, Chief Justice, and five other Judges (against *Ellis* and *Adams*) reversed the judgment upon the matter in Law. That the action lies not. (Note, The Lord Chief Justice *Farthing*, and Lord Chief Baron *Trotter*, both deceased, who in their lives were eminent Members of Parliament, were of the false opinion.)

Soon after the Revolution, Sir Samuel Barnardiston brought his Writ of Error into the House of Peers, to reverse the reversal of the judgment given in the Exchequer; but the House affirmed the reversal of the said judgment, as appears by the following Resolutions.

Per curiam, 24 May, 1689.

THIS Day the Lord Chief Justice of the Court of King's Bench brought into this House a transcript of a Writ of Error, to reverse a judgment given against Barnardiston at the suit of Soame.

Sabbath, 25 May, 1689.

Whereas Sir Samuel Barnardiston brought his Writ of Error into this House, and hath assigned errors thereupon, to which Sir William Soame was Defendant; who left Dame Catherine Soame, his widow, his executrix; and the House being moved, that the said Dame Catherine Soame may join issue thereupon; it is ordered by the Lords Spiritual and Temporal in Parlia-

ment assembled, that the said Dame Catherine Soame be, and is hereby required to join issue to the said Writ, on or before Thursday next, being the sixth instant, at ten of the clock in the forenoon; whereas the said Sir Samuel Barnardiston is to cause notice to be given to the said Dame Soame, to the end the issue may accordingly.

Sabbath, 3 Junij, 1689.

The House being moved, that they would be pleased to appoint a day for hearing the errors argued upon the Writ of Error brought into this House, wherein Sir Samuel Barnardiston is Plaintiff, and Dame Catherine Soame, widow, executrix of Sir William Soame, Defendant: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That this House will hear the said errors argued by Counsel on both sides, at the bar, on Saturday next, being the fifth instant, at ten of the clock in the forenoon; and in the mean time the may join issue if they please: whereas the said Sir Samuel Barnardiston is to cause notice to be given to the said Dame Catherine Soame, to the end she attend accordingly.

Sabbath, 8 de Junij, 1689.

This day being appointed for hearing errors argued by Counsel, upon the Writ of Error wherein Sir Samuel Barnardiston and the Lady Soame, the Counsel for the Plaintiff appeared, but none appeared for the Defendant: And upon such made at the bar by Nicholas Baily, Solicitor, that he served the order of this House at the house of the Lady Soame; thereby giving notice, that the cause was to be heard this day, whereas the House heard the Counsel of the Plaintiff, and made the ensuing Order, &c.

After hearing Counsel this day, upon the Writ of Error depending in this House, wherein Sir Samuel Barnardiston is Plaintiff, and Dame Catherine Soame is Defendant: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, the wrong judgment on this Writ of Error be, and is hereby adjudged, null, void, and of no effect; and that they are, and were Judges, and now in Town do attend this House that day, to inform the House of their reasons and grounds for their judgment for reversal of the judgment in Sir Samuel Barnardiston's case.

Ordered, That all the Judges be present on Monday morning, to advise this House in this business of Sir Samuel Barnardiston.

Monday, 10 Junij, 1689.

William Montague, Esq. was called in, and the Speaker told him, That the House desired to hear from him, upon what grounds and opinions he gave his opinion for the reversal of the judgment for giving eight hundred pounds to Sir Samuel Barnardiston?

He taking notice that there was Counsel present for Sir Samuel Barnardiston, but no Counsel for the Lady Soame, he said, seeing the Defendant did not appear with Counsel, he desired he might not be looked upon as Counsel for the Defendant; upon that the company was commanded to withdraw: And the House ordered Mr. Montague should be admitted to come in alone; who being come in, said, he would, for their Lordships satisfaction (as well as he can remember) acquaint them with the grounds and reasons which induced him to give his opinion for the reversal of that judgment; and so he proceeded to give the heads of what he said, which being ended, he withdrew.

And after consideration thereof, it was moved that the Counsel for Sir Samuel Barnardiston should be called in, and the Speaker to acquaint them with the effect of what Mr. Montague had said; that so the Counsel might be able thereby to reply, for the better information of their Lordships and the Judges then present. And after some debate, the question was put, whether the Counsel shall be called in? It was resolved in the negative.

Then it was moved to make use of proxies, which was opposed, as concerning their not being admitted in preliminary cases of judgment.

After hearing William Montague, Esq. for his judgment in Sir Samuel Barnardiston's case, and debate thereupon, it is ordered, That the Clerk do inspect the books concerning proxies; and whether they have been used in cases of judicature; and give an account to-morrow morning what he finds therein: And that all the Judges do attend the House to-morrow.

Martin, 11 Junij, 1689.

The Clerk of the Parliament, in pursuance of the Order yesterday, shewed several instances where proxies have been used in preliminaries to private causes: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That proxies may be used in such preliminary cases, but not in giving judgment; and that this order be added to the Roll of binding Orders.

Ordered, That the Counsel of Sir Samuel Barnardiston shall be heard on Friday next to reply to what Mr. Montague gave for his reasons for reversal of Sir Samuel Barnardiston's judgment; and that all the Judges do attend at the same time.

Per curiam, 14 de Junij, 1689.

After hearing Counsel in Sir Samuel Barnardiston's case this day, to reply to what Mr. William Montague said for his reasons to reverse the judgment given in the Exchequer: It is ordered, That this House will hear all the Judges give their opinions in this case on Tuesday the 25th of this instant June, at ten of the clock in the forenoon.

Martin, 25 de Junij, 1689.

The House heard the opinion of all the Judges in the case of Sir Samuel Barnardiston, upon his Writ of Error depending in this House.

And the question being put, Whether to go on in the debate of this business now? It was resolved in the affirmative.

After debate, the question being put, Whether to reverse the reversal of the judgment given between Sir Samuel Barnardiston and Sir William Soame? It was resolved in the negative.

Leave is given to several Lords to cater their dissent to the above said question, and accordingly do enter their dissent for the reasons ensuing.

1. Because it is a denying Sir Samuel Barnardiston the benefit of law, which gives relief in all wrong and injury: And tho' this be an action of the civil impression, yet concerning a damage to the Plaintiff, the Common Law gives him this action to repair himself; and if it were not so, there would be a failure of justice, which cannot be admitted.

2. Because

g. Because the allowing this reversal tends towards the giving the power and encouragement to Sheriffs to make false and double returns; by which means the right of Elections will be avoided, and it tends thereby to the picking of a House of Commons, which may overturn the whole frame of the Government, and establish what Religion and Government a pack'd Parliament shall think fit.

Edwin,
Mansfield,
P. Whiston,

S. Stanford,
Hersch.

Whereas by virtue of their Majesties Writ of Error, returnable into the House of Peers, a record of the Court of King's Bench was brought into this House the 24th of May, 1689, with the transcript thereof, wherein judgment is entered for Sir Samuel Barnardiston against Sir William Stane: upon which Writ, Errors being assigned, after hearing Counsel at the Bar, to argue the said Errors assigned, and due consideration had of what was offered thereupon, the Lords Spiritual and Temporal in Parliament assembled, do order and adjudge, that the Judgment given in the Exchequer Chamber, for the reversal of the Judgment given in the Court of King's Bench for Sir Samuel Barnardiston against Sir William Stane, be, and is hereby affirmed: And that the said Writ of Error, and transcript annexed, be returned to the Court of King's Bench.

The Tenor of which Judgment to be affixed to the Transcript to be remitted, follows;

E T postea, scilicet quarto die Maii Anno Regni Domini Gaspari & Duce Marce nunc Regis & Regine Angl. primo transacti. Record. & process. pred. inter partes pred. cum consiliis ac tangent. preest. casualium iure, de Error assignato, & preest. Samuel Barnardiston, in preest. perdict. dict. Dom. Reg. & Dom. Regine ingreditur. Parliament. a pred. curia dict. Dom. & Domine Regis & Regine hic transmissi. fuit prof. Samuel. in eadem curia Parliament. comperta, diversis causis & materiis per Errores in Record, & process. pred. per revocatione & adnullatione Iudicii Record. assignavit; & postea scilicet 25 die Junii Anno dicti. Dom. & Domine Regis & Regine, supradicti. in pred. curia Parliament. preest. & per cur. ibidem dictum examinavit. & plenius innotuit. Sam. Recordo & Process. pred. ac Iudicio super istis reddit. cum Errores superius assignat. pro eo quod videtur cur. Parl. record. quod Record. illum in multis vitiosis aut defectibus exstitit, & quod in Record. illi, in valla errata, aliis & ibidem confutationibus est per eandem curiam Parliament. pred. quod Iudic. pred. in omnibus affirmavit & in eam hoc reboet fiet & effectus.

XXXI. Proceedings in the House of Commons, on an Appeal being brought in the House of Lords, by Dr. SHIRLEY, against Sir JOHN FAGG, and others, their Members, May 1675, 27 Car. II.

SIR John Fagg, Bart. this day informed the House, that he was summoned to appear to a Petition in the House of Lords; a Committee was thereupon appointed to search for precedents to that purpose.

Mercurii, 5 Maii.

Resolved, That a Message be sent to the Lords, to acquaint them that this House hath received information, That there is a Petition of Appeal depending before them, at the suit of Thomas Shirley, Esq. against Sir John Fagg, a Member of this House; to which Petition, he is, by order of the House of Lords, directed to answer on Friday next; and to desire the Lords to have a regard to the privileges of this House; and that Sir Trevor Williams do go up with the Message to the Lords.

Sir Trevor Williams reports, that he had attended the Lords with the Message of this House, concerning Sir John Fagg; and that the Lords will return an answer by Messengers of their own.

Mercurii, 7 Maii.

A Message from the Lords by Sir William Bourne, and Sir Samuel Clarke.

Mr. Speaker,

The Lords have considered of the Message received from the House of Commons, concerning privilege in the case of Sir John Fagg, and do return this answer, That the House of Commons need not doubt, but that the Lords will have a regard to the privileges of the House of Commons, as they have of their own.

Sabbati, 8 Maii.

A Committee was appointed to inspect the Lords Journals, to see what entries are therein made against Sir John Fagg, a Member of this House, and to report the same.

Mercurii, 12 Maii.

Dr. Thomas Shirley ordered to be sent for to custody, to answer his breach of the privileges of this House, in prosecuting a suit by petition of Appeal in the Lords House, against Sir John Fagg, a Member of this House, during the session and privilege of Parliament.

And a Committee is also appointed to inspect the Lords Journals, to see what has been done in like cases; and the said Sir John Fagg is ordered not to proceed, or make any answer to the said Appeal, without the licence of this House.

Mercurii, 14 Maii.

Sir Thomas Lee reports from the Committee appointed to inspect the Journals of the House of Lords, and the entries therein, in the case between Dr. Thomas Shirley and Sir John Fagg, a Member of this House, that the Committee had perused the Journals of the Lords House, and found the entries to be as follows:

April 26 36h.

Thomas Shirley, Esq. presented a Petition to the Lords. Ordered, That the said Sir John Fagg may have a copy of the said Petition, and put in his answer thereto, in writing, on Friday the 7th day of May next, at ten of the clock in the forenoon, if he thinks fit.

May 26 5h.

The Commons send a Message by Sir Trevor Williams: The Knights, Citizens, and Burgesses of the House of Commons, in Parliament assembled, have been informed, that there is a Petition of Appeal depending before their Lordships, at the suit of Thomas Shirley, Esq. against Sir John Fagg, a Member of their House. To which Petition he is, by their Lordships order, directed to answer on Friday next, and desire their Lordships to take care of their privileges.

Answer, That this House have considered of their Message, and will send answer by Messengers of their own.

Ordered, That the Committee for Privileges do meet this afternoon, to consider of the Message received from the House of Commons this day, concerning Thomas Shirley, Esq. and Sir John Fagg, a Member of the

House, and search precedents in the case, and report to the House to-morrow morning.

May 26 5h.

The Earl of Berke reported, That the Committee of Privileges having met and considered of what was referred to them in the case between Thomas Shirley, Esq. and Sir John Fagg, a Member of the House of Commons, and the Message from the House of Commons thereupon; have ordered him to report, That the Committee have found that the House did order the business of Mr. Hale and Mr. Shipley, upon the like Message of the House of Commons, to the Committee of Privileges; who had report to the House, That it is the undoubted right of the Lords as judicature, to receive and determine in time of Parliament, Appeals from inferior Courts, though a Member of either House be concerned, that there may be no failure of justice in the law; and the House did agree with their Lordships, upon this occasion, to take the same course, and to insist upon their just rights in this particular, which their Lordships will be pleased to signify to the House of Commons, in such manner as they shall think fit.

The House agreed with the Committee in this declaration, and ordered the same to be entered into the Journal-book of this House, as their declaration was.

"That it is the undoubted right of the Lords as judicature, to receive and determine in time of Parliament, Appeals from inferior Courts, though a Member of either House be concerned, that there may be no failure of justice in the law."

Then it was moved, that the former answer sent to the House of Commons, in the case of Mr. Shipley and Mr. Hale, might be given now to the House of Commons, in this case of Sir John Fagg; and that the declaration and report agreed to this day, might be added to it.

The Declaration aforesaid was read, and the question being put, Whether this shall be as a part of the answer to be given to the House of Commons? It was resolved in the negative.

The answer returned hitherto to the House of Commons, in the case of Mr. Shipley and Mr. Hale, was in these words: That the House of Commons are not bound but that their Lordships will have a regard to the privileges of the House of Commons, on the hour of their own.

The question being put, Whether this answer shall be now returned to the Message from the House of Commons? It was resolved in the affirmative.

May 27th, it was sent accordingly.

May 7.

Whereas this day was appeared for Sir John Fagg to put in an answer to the Petition and Appeal of Thomas Shirley, Esq. depending in this House, if he thought fit; the said Sir John Fagg appearing personally this day at the Bar, and desiring longer time to put in an answer thereunto;

It is thereupon ordered, That the said Sir John Fagg hath hereby further time given him for putting in his answer, till Wednesday next, being the 28th day of this instant May, at ten o'clock in the forenoon.

May 12.

Sir John Fagg put in his answer to the petition of Mr. Shirley. A debate arising thereupon, touching the privilege of their House; Resolved, &c. That the Appeal brought by Dr. Shirley in the House of Lords, against Sir John Fagg, a Member of this House, and the proceedings thereupon, are a breach of the undoubted rights and privileges of this House.

The House being informed, that the Warrant of this House for taking of the said Dr. Shirley into custody, was forcibly taken away and detained from the Sergeant at Arms his Deputy, attending this House, by the Lord Abbot: And the Sergeant's Deputy being called in and examined as to the manner of fact, gave this testimony:

That he found Dr. Shirley in the inner Lobby of the House of Lords, and that he came to him, and desired to speak with him, and acquainted him that he had a Warrant from the House of Commons to apprehend him, and desired to know, whether he could show him any reason to excuse him, that

that he might not come the warrant to him: And that he likewise told him, that he would not execute the warrant on him in that place, but desired of him, that he would go along with him freely; and that in case he would not, he would take his opportunity in another place.

And that the said Lord Mordaunt coming in, in the mean time, required him to show his warrant; which being produced, the Lord Mordaunt laid hands on it, and held it to fall, that it was in danger of being torn; and that therefore he was forced to part with it, and desiring to have it again, the Lord Mordaunt refused it, but carried the warrant into the House of Lords. That Dr. Sturley afterwards refused to go along with him, saying, that he was not then his prisoner; and that several persons intervening, the Doctor escaped from them. And a debauching ensued thereupon.

Resolved, That a Message be sent to the Lords to complain of the Lord Mordaunt, for forcibly taking away and detaining the warrant of this House, from the Deputy Sergeant at Arms, for taking of Dr. Sturley into custody; and to demand the justice of the Lords House against the said Lord Mordaunt.

And that the Lord Arden do go up to the Lords with the Message.

Ordered, That Mr. Speaker do issue forth a new warrant to the Sergeant at Arms attending this House, for apprehending Dr. Thomas Sturley, to answer his breach of privilege, for producing a fact by petition of Appeal in the Lords House, against Sir John Figg, a Member of this House, during the session and privilege of Parliament.

Session, 15 May 1675.

The Lord Arden reports from the Lords, that he had, in challenge to the commands of this House, attended the Lords, and delivered the Message concerning the Lord Mordaunt's taking away and detaining the warrant for apprehending Dr. Sturley, and that the Lords had returned this answer;

Gentlemen of the House of Commons,

The Lords have considered of your Message, and of the complaint therein; and they return you this answer, That they find the Lord Mordaunt have done nothing but what is according to his duty.

The House then resumed the debate of the matter concerning the privileges of this House, and the matter being debated,

Resolved, *Scilicet*, That the Appeal brought by Dr. Sturley in the House of Lords against Sir John Figg, a Member of this House of Commons, and the proceedings thereupon, is a breach of the undoubted rights and privileges of the House of Commons; and therefore the Commons desire, that there be no further proceedings in that cause, before their Lordships.

Ordered, That a conference be desired with the Lords concerning the privileges of this House, in the case of Sir John Figg; and that Sir Thomas Lee do go up to the Lords to desire a conference.

A Message from the Lords by Sir Maudslayi Brampton, and Sir William Goffart:

Mr. Speaker,

We are commanded in let this House know, that the Lords spiritual and temporal assembled in Parliament, have received a warrant, signed Edward Seymour, which they have appointed us to show you; and desire to know, whether it is a warrant ordered by this House?

The matter of the Message being debated, the question being put, That the word *superintendency*, be part of the answer to the Lords Message, It passed in the negative.

Resolved, That the messengers be called in, and that this Answer be returned, That this House will consider of the Message.

The messengers being called in, Mr. Speaker does acquaint them, that the House will consider of the Message.

Resolved, That the Message last received from the Lords, lean unsatisfactory Message.

Resolved, That a conference be desired to be had with the Lords upon the subject-matter of the last Message received from the House of Lords.

Resolved, That it be referred to Mr. Garraway, Esq. to draw up a petition to be offered at the said conference.

Then the House being informed, that there is a cause upon an Appeal brought up by Sir Nicholas Dingwall, against Mr. Ogden, a Member of this House, appointed to be heard at the bar of the Lords House.

Resolved, That a Message be sent to the Lords to acquaint them, that this House has received information, that there is a cause upon an Appeal brought by Sir Nicholas Dingwall against Mr. Ogden, a Member of this House, appointed to be heard at the bar of their House, on Monday next; and to desire their Lordships to have regard to the privileges of this House: And that Sir Richard Temple do go up with the Message to the Lords.

Ordered, That Mr. Ogden do not appear any further in the prosecution of the Appeal brought against him by Sir Nicholas Dingwall, in the House of Lords.

Ordered, That Sir Nicholas Dingwall be sent for in custody of the Sergeant at Arms attending this House, to answer his breach of privilege in prosecuting a suit in the House of Lords, against Arthur Ogden, Esq. a Member of this House, during the session and privilege of Parliament.

Resolved, That whoever shall appear at the bar of the Lords House, to prosecute any but against any Member of this House, shall be deemed a breaker and infringer of the rights and privileges of this House.

Session, 17 May 1675.

Sir Richard Temple reports, That the person appointed had attended the Lords, and delivered the vote of this House, concerning the Appeal brought by Dr. Sturley against Sir John Figg.

So Sir Thomas Lee reports from the Committee appointed to draw up reasons for the conference to be had with the Lords, Reasons agreed by the Committee, which are as follow, viz.

For that the Message is a way of interrogatory upon the proceedings of the House of Commons, in a case concerning the privilege of a Member of that House, of which they are proper Judges.

For that the matter of the Message comes in it an undue reflection upon the Speaker of the House of Commons.

For that the matter of the Message does highly reflect upon the whole House of Commons, in their Lordships questioning that House concerning their own orders; which they have the more reason to apprehend, because the day before this Message was brought to them, the warrant was owned

by the complaint of the House of Commons to their Lordships, that the same was taken and detained upon a warrant of theirs; by a Peer, which imports, that the question in that Message could not better inform them fully, and to tends to interrupt that mutual good correspondence, which ought to be preserved invariably between the two Houses of Parliament.

Session, 18 May 1675.

Sir Richard Temple reports from the Lords, That he had attended their Lordships, according to the command of this House, with the message in the case of Mr. Ogden, to which the Lords returned an answer, which being in writing, was delivered in at the Clerk's table, and read, and is as followeth:

The Lords do declare, That it is the undoubted right of the Lords in judicature, to receive and determine in the Parliament Appeals from inferior Courts, except a Member of either House be concerned, that there may be no failure of justice in the law. And from this right, and the exercise thereof, their Lordships will not depart.

The matter of the Lords answer being debated, Resolved, "That it is the undoubted right of this House, that none of their Members be summoned to attend the House of Lords, during the session or privilege of Parliament."

Resolved, That a conference be desired with the Lords, upon the privileges of this House, contained in the Lords answer to the last Message of this House, in the case of Mr. Ogden.

Ordered, That Sir Henry Figg do go up to the Lords, to desire a conference upon the subject-matter of their Message, concerning the warrant for apprehending Dr. Sturley.

Session, 20 May 1675.

Sir Thomas Lee reports, from the Committee appointed to draw up reasons to be offered at the conference to be had with the Lords upon the privileges of this House, contained in the Lords answer to the last Message of this House, in the case of Mr. Ogden, which reasons were twice read, and with some alterations at the Clerk's table (upon the question severally put) agreed to: which are as follow, viz.

1. That by the laws and usage of Parliament, privilege of Parliament belongs to every Member of the House of Commons, in all cases, except Treason, Felony, and breach of the Peace; which hath often been declared in Parliament, without any exception of Appeals before the Lords.

2. That the reason of that privilege is, that the Members of the House of Commons freely attend the public affairs of that House, without disturbance or interruption; which hath extended as well to Appeals before the House of Peers, as to proceedings in other Courts.

3. That by the constant course and usage of Parliament, no Member of the House of Commons can attend the House of Lords, without the especial leave of that House first obtained, much less be summoned or compelled to do so.

4. If the Lords shall proceed to hear and determine any Appeal where the party neither can, nor ought to attend, such proceedings would be contrary to the rules of justice.

5. That the not determining of an Appeal against a Member of the House of Commons, is not a failure of justice, but only a suspension of proceedings in a particular case, during the continuance of that Parliament, which is but temporary.

6. That as it is a failure of justice, it is not to be remedied by the House of Lords alone, but it may be by Act of Parliament.

Hence Sir Thomas Lee reports from the Committee appointed to prepare the further address of the House to his Majesty, for the reviving of his father's as is in the *Prærogative* King's service; which the House desired the further consideration of all *Parliament* next.

Then Sir Thomas Lee reports from the Lords, that he had attended, and desired a conference with the Lords on the privilege of this House, contained in the Lords answer to the Message of this House, in the case of Mr. Ogden: And that the Lords will return an answer by Messengers of their own.

Mr. Pease reports, from the conference had with the Lords upon the subject-matter of the former conference, concerning the warrant for apprehending Dr. Sturley, That the Lords had returned an answer to the reasons of this House, delivered at the former Conference, and are as follow:

"The Lords have appointed this conference, upon the subject-matter of the last conference, and have commanded us to give their answers to the reasons and other matters then delivered by the House of Commons."

"To the first question, the Lords conceive, that the most natural way of being informed, is by way of question; and fixing a paper here which did reflect upon the privileges of the Lords House, their Lordships would not proceed upon it till they were assured it was owned by the House of Commons: But the Lords had no occasion at that time, nor do they now

think fit to enter into the debate of the House of Commons being or not being proper Judges in the case concerning the privilege of a Member of that House; their Lordships need only consider upon facts of this paper, being only, how far the House of Commons intended (if that paper were theirs) the apprehension of Dr. Sturley, for prosecuting his Appeal before the Lords, did encroach upon their Lordships both privilege and undoubted rights of judicature in the consequence of it, exempting all the Members of both Houses from the judicature of this the highest Court of the Kingdom; which would cause a failure of that supreme justice, not admissible in any other Court, and which their Lordships will never admit."

"As to the second reason, the Lords answer, That they do not approve head how the Matter of this Message is any reflection upon the Speaker of the House of Commons."

"To the third reason, The Lords cannot imagine how it can be apprehended to the lead to reflect upon the House of Commons, for the House of Peers, upon a paper produced to those Lordships, in form of a warrant of that House, wherein doubts was made among the Lords, whether any such thing had been ordered by that House, to enquire of the Commons, whether such warrant was ordered there or no? And without such Liberty by the Lords, it will be very hard for their Lordships to be rightly informed, in as to perform a good correspondence between the two Houses, which their Lordships shall endeavour to know when warrants in the name of that House are true or pretended: And it is so ungrounded an apprehension, that their Lordships intended any reflection

"Action in asking that question, and not taking notice in their message of the complaint of the House of Commons concerning that warrant, that the Lords had sent their message concerning that paper to the House of Commons, before the Lords had received the said Commons complaint."

"But their Lordships have great cause to except against the unjust and unkind reflection of that House upon their Lordships, in asserting that the question in the Lords' message could not be for information, as we affirm, but tending to interrupt the mutual correspondence between the two Houses; which we deny, and had not the least thought of."

"The Lords have further commanded us to say, that they doubt not when the House of Commons have received what we have delivered at this conference, they will be sensible of their error, in calling our message strange, unusual, or unparliamentary. Though we cannot but take notice, that their answer to our message, that they would consider it, was the first of that kind that we can find to have come from that House."

"The question being put, Whether the House be satisfied with the reason delivered by the Lords at the last conference? it passed in the negative. *Resolved*, That a free conference be desired with the Lords upon the matter delivered at the last conference; and that the former Managers do attend, and manage the free conference."

Friday, May 21. The House resolved on *Wednesday* next to proceed in the further consideration of that part of the message relating to Appeals from inferior Courts. *Sir Trevor Williams* ordered to go up to the Lords, to desire a conference upon the privileges of this House, contained in their answer to the message touching *Mr. Ogilby's* case, which he accordingly did; and reports, That the Lords will return an answer thereto by messengers of their own.

May 25. A message ordered to be sent to the Lords to remind them of the former message; and upon it to desire a conference upon the privileges of this House, in the case of *Mr. Ogilby*. And ordered the matter of the jurisdiction of the Lords, in cases of Appeal, be taken into consideration to-morrow morning.

Parliament, 28 May, 1675.

Sir Thomas Lee reports, from the Committee to whom it was referred to draw up reasons to be offered at a conference to be had with the Lords upon the subject-matter of their answer to the last message of this House, in the case of *Mr. Ogilby*, several reasons agreed by the said Committee; which he read at his place, and afterwards delivered the same in at the Clerk's table; where the same being twice read, were, upon the question, severally agreed unto, and are as follow, viz.

"For that the Commons desired a conference upon their privileges concerning by the Lords answer to a message sent to the Lords the 18th of May, in the case of *Mr. Ogilby*; their Lordships have not agreed any conference in the case of *Mr. Ogilby*; but have only agreed a conference concerning their privilege in general, without reference to the case of the said *Mr. Ogilby*, which was the only subject-matter of the desired conference."

"The limitation in the Lords' agreement to a conference, with proviso that nothing be offered at the conference that may in any way concern their Lordships' jurisdiction, is in effect a denial of any conference at all, upon the subject on which it was desired; which ought not to be: the jurisdiction which their Lordships claim in Appeal against a Member of the House of Commons, and the privilege of that House being in that case involved, that there can be no conference upon the latter, without some way touching upon the former."

"That this manner of agreeing to a conference with any limitation or proviso, is against the course of Proceedings between the two Houses of Parliament, in coming to conference; and doth tend to place a power in the Managers of such conferences, to judge whether such proviso's be broken or not; and accordingly to proceed, or break off the conference upon their own judgments."

June, 31 May, 1675.

Sir Leslie Jenkins reports, that he had attended the Lords, with the message of this House, for conference upon the subject-matter of the Lords' answer to the last message of this House, in the case of *Mr. Ogilby*; and that the Lords had sent answer, that they would return answer by messengers of their own.

A message from the Lords by *Sir Mansfield Bromfiel*, and *Sir William Bromfiel*.

"*Mr. Speaker*,

"The Lords have commanded us to acquaint you, that they desire a conference presently in the Painted-Chamber, with the House of Commons, upon that not coming to the conference desired by them on *Thursday* last, and by the Lords appointed to be at ten of the clock in the Painted-Chamber, on *Friday* the 31st of this instant *May*."

The messengers being withdrawn, and the message debated, a present conference upon the question was agreed.

And the messengers being called in, *Mr. Speaker* acquainted them, that the House had agreed to a present conference.

Ordered, That the former Members that were appointed to manage the former conference in the case of *Mr. Ogilby*, do attend and manage this conference.

Sir John Trevor reports, from the conference, that the Lords had declared the intent of this conference, in the effect following, viz. "That the Lords have appointed this conference, out of that constant desire and resolution that they have to continue a free correspondence between the two Houses; which is of the essence of Parliamentary Proceedings."

"For this end their Lordships have commanded us to tell you, that they cannot but take notice of the House of Commons failing to be on *Friday* last, at a conference desired by themselves, and appointed by the Lords at ten of the clock in the Painted-Chamber."

"That they conceive it tends to an interruption of all Parliamentary Proceedings, and to evade the right of the Lords to appoint time and place for a conference."

Voc. VII.

Ordered, That it be referred to the former Committee, who are appointed to draw up reasons, to be offered at a conference to be had with the Lords, upon the subject-matter of their answer to the message of this House, in the case of *Mr. Ogilby*; to consider of the manner delivered by the Lords at the last conference; and to prepare and draw up further reasons, to be offered at another conference to be had with the Lords, upon the subject-matter of the last conference. And that the Committee do meet this afternoon at five of the clock in the Speaker's Chamber. And *Mr. Sergeant Maynard*, and *Mr. Serjeant*, are to have notice to attend the same.

Mardi, 1 Juny, 1675.

Sir Thomas Lee reports, from the Committee appointed to inspect the Journals of the House of Lords, and to set what Proceedings have been entered, in the case of *Mr. Dalnashy* and *Mr. Ogilby*; that they had inspected the Lords' Journals, as to the case of *Mr. Dalnashy*, and collected what Proceedings had been in that case, but had no opportunity of time, yet to do it in the case of *Mr. Ogilby*. Which Proceedings being reported, were read, and delivered in at the Clerk's table, and are as follow, viz.

29 April, 1675.

The Appeal brought by *Cryse* and *Cryse*, complaining against a Decree in Chancery made, wherein *Mr. Dalnashy* is named to be one of the Petitioners; *Creskorne* and *Bryer* are ordered to put in an answer, and *Dalnashy*, if he please.

May 12, 1675.

Ordered, That this House will hear Counsel at the Bar, upon the Petition and Appeal of *Sir Nicholas Cryse* and others, against the Lady Viscountess *Creskorne*, the Lady Anne *Bryer*, and *Thomas Dalnashy*, Esq; and their answer thereto, depending at this House, on *Wednesday* the 19th of this instant *May*, at six of the clock in the forenoon; wherein the Petitioners are to cause timely notice to be given to the said Defendants, or their Agents in the said cause, for that purpose.

May 26, 1675.

Whereas *Sir Nicholas Cryse*, Barr. having an Appeal depending in this House, against the Lady Viscountess, Lady *Bryer*, and *Thomas Dalnashy*, Esq; a Member of the House of Commons, hath prayed that Council may be assigned him to plead his cause upon the said Appeal, and hath named Council for that purpose:

It is ordered, That *Sir John Churchill*, *Sergeant Puck*, *Sergeant Powhatan*, and *Mr. Prier*, named by the said *Sir Nicholas Cryse*, be, and are hereby appointed to open, and manage the said cause, on the part and behalf of the said *Sir Nicholas Cryse*, on *Thursday* the 27th day of this instant *May*, at ten of the clock in the forenoon; and at such other times, as it shall be depending in this House.

Upon reading the Petition of *Sir Nicholas Cryse*, Barr. *Thomas Cryse* and *John Cryse*, Esqrs. shewing, that having an Appeal depending in this House against *Thomas Dalnashy*, Esq; a Member of the House of Commons, and others, they are in danger of being arrested by an order of the House of Commons; and therefore pray the protection of this House, that they may have liberty to prosecute their said Appeal with Freedom:

It is thereupon ordered, That the said *Sir Nicholas Cryse*, Barr. *John Cryse*, and *Thomas Cryse*, or any of them, their or any of their Counsel, Agents or Solicitors, or such other person or persons as they shall employ, in prosecuting the said Appeal before this House, be, and are hereby privileged, and protected accordingly by this House; until the matter upon the Appeal be determined by their Lordships. And all persons whatsoever are hereby prohibited from arresting, imprisoning, or otherwise molesting the said *Sir Nicholas Cryse*, *John Cryse*, and *Thomas Cryse*, or any of them, their or any of their Counsel, Agents, or Solicitors, upon any pretence whatsoever, during the time prefixed, as they or such of them will answer the contrary to this House.

May 26, 1675.

The cause between *Sir Nicholas Cryse*, etc. plaintiffs, and *Thomas Dalnashy*, Esq; defendant, appeared to be heard the 27th, was ordered to be heard the 28th *May*.

May 27.

Upon reading the petition of *Sir Nicholas Cryse*, complaining, that the Council assigned him by this House, to plead his cause at the bar, wherein *Mr. Dalnashy* is one of the defendants, do refuse to plead for him in this case, in regard of a vote of the House of Commons; *Sir Nicholas Cryse* was called in, and shewed, that he desired the order of this House to *Sergeant Puck*, *Sergeant Powhatan*, *Sir John Churchill*, and *Mr. Prier*.

Whereupon it is ordered, That whereas *Sir John Churchill*, *Sergeant Puck*, *Sergeant Powhatan*, and *Mr. Prier*, were by order of this House, dated on the 19th instant, assigned to be Counsel for *Sir Nicholas Cryse*, *John Cryse*, and *Thomas Cryse*, in their cause depending in this House against *Thomas Dalnashy*, Esq; a Member of the House of Commons, and other defendants, at such time as the said cause shall be appointed to be pleaded at the bar of this House; having appointed to bear the said cause by Counsel on both sides, to-morrow at three of the clock in the afternoon:

It is this day ordered, That the said *Sir John Churchill*, *Sergeant Puck*, *Sergeant Powhatan*, and *Mr. Prier*, be, and are hereby required, to appear at the bar of this House, to-morrow, at three of the clock in the afternoon, as Counsel to plead in the said cause, on the behalf of the said *Sir Nicholas Cryse*, *John Cryse*, and *Thomas Cryse*, as they will answer the contrary to this House.

May 28, 1675.

Counsel heard at the bar on both parts, upon the Petition and Appeal of *Sir Nicholas Cryse*, etc. and the order of *Dionis Viscountess Creskorne*, etc. and *Thomas Dalnashy*, Esq; put in defenses, concerning a decree in Chancery: *Resolved*, the Petition and Decree be dismissed.

May 28.

This day the House heard the Counsel of *Sir Nicholas Cryse*, *John Cryse*, and *Thomas Cryse*, upon their Petition and Appeal depending in this House; and also the Counsel of the Lady *Bryer*, and *Mr. Dalnashy*, upon their answer thereto; and after a serious consideration thereof, the question being put, Whether this Petition and Appeal shall be dismissed this House? It was resolved in the affirmative.

N n a

Mr.

Mr. Serjeant Pemberton, Sir John Churchill, Mr. Serjeant Paul, and Mr. Porter attending at the door, in obedience to the order of the House of Commons; and being severally called in, Mr. Speaker did severally acquaint them, that they were summoned to give an account to the House, of their speaking as Counsel at the Bar of the House of Lords, in the prosecution of a cause depending upon an appeal, wherein Mr. Delaval, a Member of this House, is concerned, in the manifest breach of the order of this House; and giving up, as much as in them lies, the rights and privileges of the Commons of England: And they having answered and made their excuses to the effect following: That they had no notice of the order or vote of this House, but what they have heard in common discourse abroad; and because they conceived Mr. Delaval, a Member of this House, might be concerned, they refused several times to appear as Counsel, or to accept their fees; but being obliged of Counsel for Sir Nicholas Grigg, and an order of the House of Lords being served on them to attend at their trial, and that these attendings, and Mr. Delaval having put in his answer in the House of Lords, and not inflicting on his privilege afterwards, and the Counsel for the Lady Brayer, who was the principal party concerned, desiring to be of counsel for Mr. Delaval, they conceived they might lawfully appear as Counsel without breach of the order, or invading the rights and privileges of this House, which was not intended by them; and Sir John Churchill, by way of further excuse for himself, said, that he had willingly ready to prove, that Mr. Delaval was willing and desirous to have the business go forward. And the said Mr. Serjeant Pemberton, Sir John Churchill, Mr. Serjeant Paul, and Mr. Porter, did all of them humbly submit themselves to the pleasure of the House, if they had in any thing misbehaved themselves; and being withdrawn, and the matter debated: The question being put, That Serjeant Pemberton be taken into the custody of the Sergeant at Arms attending this House?

It was resolved in the affirmative.

Ordered, That Serjeant Pemberton, Sir John Churchill, Mr. Serjeant Paul, and Charles Porter, Esq. be taken into the custody of the Sergeant at Arms attending this House, for their breach of privilege of this House.

Monday, 2^d Janu.

Ordered, That Sir Richard Temple, Mr. Poynter, and Sir Thomas Lee do withdraw, and amend the reasons upon the debate of the House, which was close; and the reasons agreed to are as follow:

"The House of Commons do agree with the Lords, that conferences between the two Houses of Parliament are essential to Parliamentary Proceedings, when they are agreed in the usual and Parliamentary way; but the manner of the Lords agreement to the conference, so have been in Friday the 21st of May last, at ten of the clock, in the Painted Chamber, with limitation and proviso, did necessitate the House of Commons to bear so great a trial at that conference, and gave the first interruption to parliamentary proceedings as conference between the two Houses.

"For that the conference defined by the Commons, was upon their privileges, concerned in the answer to the Lords in a message of the House of Commons, sent to the Lords the 17th of May, in the case of Mr. Ogleby, to the which the Lords did not agree, but did only agree to a conference concerning their privileges in general, without reference to the case of the said Mr. Ogleby; which was the only subject-matter of the desired conference.

"The limitations in the Lords agreement to a conference, with proviso that nothing be offered at the conference that may any ways concern the Lords jurisdiction, is in effect a denial of any conference at all upon the subject upon which it was desired, which ought so to be.

"The jurisdiction which the Lords claim in Appeals against a Member of the House of Commons, and the privilege of that House in that case, is so involved, that no conference can be upon the matter without some way touching the former.

"That this manner of agreeing in a conference with any limitation or proviso, is against the course of proceedings between the two Houses of Parliament, in coming to conferences; and doth tend to place a power in the Managers of such conferences to judge, whether such proviso be broken or not; and accordingly to proceed or break off the conference upon their own judgments.

"The House of Commons doubt not, but that when the Lords have considered of what is delivered at this conference, the good correspondence which the Lords express they desire to continue between the two Houses, (which the Commons also are no less careful to maintain) will induce them to remove the present interruption of coming to conferences; and therefore to agree to the conference, as it was desired by the House of Commons, upon the privileges of their House, concerned in the Lords answer to the message of the House of Commons, in the case of Mr. Ogleby: That the particular limitation, that nothing be offered at the conference, that may any ways concern the jurisdiction of the Lords, appears unreasonable; for that their Lords jurisdiction in Parliament is circumscribed by the laws of the land, as to their proceedings and judgments, and is, as well as all other Courts, subjected to Parliament."

Tuesday 3^d Janu. 1675.

Mr. Poynter reports, That the Lord Pryor-Seal did manage the conference, and had delivered the intent and occasion of the conference; which Mr. Poynter did report to the House, to the effect following, viz.

"The Lords do take notice of the House of Commons, their ordering into custody of their Serjeant, Mr. Serjeant Paul, Sir John Churchill, Mr. Serjeant Pemberton, and Mr. Charles Porter, Counsellors at Law; as if agreed by their Lords to be of Counsel in an Appeal heard at their Lords Bar, in the case of Sir Nicholas Grigg, against the Lady Brayer, Mr. Delaval, and others; the Lords in Parliament, where his Majesty is highest in his royal estate, and where the last resort of judging upon Writs of Error, and Appeals in Equity, in all cases, and over all persons, is undoubtedly fixed, and permanently lodged.

"It is an unexampled usurpation and breach of privilege against the House of Peers, that their orders or judgments should be disputed, or endeavoured to be controuled, or the execution thereof obtruded by the Lower

House of Parliament; who are no Court, nor have authority to administer an oath, or give any judgment.

"It is a transgression against the right and liberty of the subject, and against *Magna Charta*, the *Petition of Right*, and many other laws, which have provided, That no Freeman shall be imprisoned, or otherwise restrained of his liberty, but by the process of Law.

"This tends to the subversion of the Government of this Kingdom, and to the introducing of arbitrariness and disorder.

"Because it is in the nature of an invasion from the Lower House (who have no authority or power of jurisdiction over inferior subjects, much less over the King and Lords) against the orders and judgments of the Supreme Court.

"We are further commanded to acquaint you, That the Lords have therefore, out of that justice which they are dispensers of, against oppression and breach of laws, by judgments of this Court, let at liberty by the Consent of the House of Commons, all the said Serjeants and Counsellors; and prohibited the Lieutenant of the Tower, and all other Keepers of prisons, and Gaolers, and all persons whatsoever, from arresting and imprisoning, detaining, or otherwise molesting, or charging the said Gentlemen, or any of them in this case: And if any persons, of what degree soever, shall presume to the contrary, their Lordships will exercise the authority with them intrusted for putting the laws in execution.

"And we are further commanded to read to you, a Roll of Parliament, in the full year of the reign of King Henry the IVth, whereof we have brought the original with us."

"And a debate arising thereupon, Resolved, That a conference be desired with the Lords upon the subject-matter of the last conference; and that their Members following, be appointed to prepare and draw up reasons upon the debates of the House, to be offered at the conference: Mr. Secretary Cromwell, Esq.

Ordered, That the effect in whole custody so far received of the fifth of Henry the IVth, mentioned at the conference with the Lords, do attend the Committee appointed to draw up reasons for another conference this afternoon: And they are to meet at three of the clock, in the Speaker's chamber, and to send for Petitions, Papers, and Records.

Ordered, That no Member of this House do attend the Lords House, upon any summons from the Lords, without leave of the House.

Friday, 4th Janu. 1675.

Ordered, That the thanks of the House be returned to Mr. Speaker, for causing Mr. Serjeant Pemberton, formerly committed by order of this House to the custody of the Sergeant at Arms attending this House, for a breach of privilege, to be letted and taken into custody in *Wynnington-hall*, for his breach of privilege.

The House being informed, that Sir John Churchill, Mr. Serjeant Paul, and Mr. Charles Porter, who were ordered to be taken into the custody of the Sergeant at Arms attending this House, are now in *Wynnington-hall*:

Ordered, That the Sergeant at Arms now attending this House, do go with his Mace into *Wynnington-hall*, and do execute the order of this House, and the warrant of Mr. Speaker thereupon; for arresting and bringing in custody Mr. Serjeant Paul, Sir John Churchill, and Mr. Charles Porter, for their breach of the privilege of this House.

The Sergeant returning, gave an account, that he had executed the order of this House, and Mr. Speaker's warrant thereupon, and had brought the said Mr. Serjeant Paul, Sir John Churchill, and Mr. Charles Porter, in custody, into the Speaker's chamber.

The question being put, That Sir John Churchill, Mr. Serjeant Paul, Mr. Serjeant Pemberton, and Mr. Charles Porter, be sent to the Tower, for their breach of privilege, and contempt of the authority of this House?

It was resolved in the affirmative.

Ordered, That Mr. Speaker do give his warrant to the Lieutenant of the Tower, to receive them into his custody.

Ordered, That John Poynter, Esq. the now Serjeant at Arms attending this House, be proceeded against all persons that shall any ways molest or hinder him from executing his office.

So Thomas Lee reported from the Committee, the reasons agreed to be offered at the conference to be had with the Lords upon the matters delivered at the last conference; which were twice read, and with some amendments made at the table, severally agreed; and are as follow, viz.

"Your Lordships having desired the last conference, upon matters of high importance concerning the dignity of the King, and the safety of the Government, the Commons did not expect to hear from your Lordships at that conference, things so contrary to, and inconsistent with, the matter upon which the said conference was desired, as were then delivered by your Lordships.

"It was much below the expectation of the Commons, that after a representation of your Lordships message of matters of so high importance, the particular upon which the conference was grounded, should be only the commitment of four Lawyers into custody of their own Serjeant at Arms, for a manifest violation of the privileges of their House."

"But the Commons were much more surprised, when your Lordships had introduced the conference with an assurance, that it was in order to a good correspondence between the two Houses, that your Lordships should immediately assume a power to judge the orders of the House of Commons for imprisonment of Mr. Serjeant Pemberton, Mr. Serjeant Paul, Sir John Churchill, and Mr. Charles Porter, to be illegal and arbitrary; and the execution thereof a great indignity to the King's Majesty; with many other high reflections upon the House of Commons throughout the whole conference, whereby your Lordships have condemned the whole House of Commons as criminal, which is without precedent or example, or any ground or reason to be shown.

"It is not against the King's dignity for the House of Commons to proceed by imprisonment, a Committee that is guilty of violating their privileges, that being according to the known laws and customs of Parliament; and the right of their privileges declared by the King's royal Presence in former Parliaments, and by himself in this.

But

"But your Lordships claiming to be the supreme Court, and that his Majesty is highest in his royal estate in the Court of judicature there, is a diminution of the dignity of the King, who is highest in his royal estate in full Parliament; and is derogatory to the authority of the whole Parliament, by appropriating it to yourselves.

"The Commons did not by this impeachment infringe any privileges of the House of Peers, but only defend and maintain their own: On the other side, your Lordships do highly intrench upon the rights and privileges of the House of Commons, by denying them to be a court, or to have any authority or power of judicature; which, if admitted, will leave them without any power or authority to preserve themselves.

"As to what your Lordships call a transcendent invasion of the rights and liberty of the subject, and against *Magna Charta*, the *Petition of Right*, and many other laws; the House of Commons profess that your Lordships know, that neither the *Great Charter*, *Petition of Right*, or any other laws, do take away the law and custom of Parliament, or of either House of Parliament, or else your Lordships have much forgotten the *Great Charter*, and those other laws, in the several judgments your Lordships have passed upon the King's subjects in cases of privilege. But the Commons cannot find by *Magna Charta*, or by any other law or ancient custom of Parliament, that your Lordships have any jurisdiction in cases of Appeals from the Courts of Equity.

"We are further commanded to acquaint you, that the enlargement of these persons in prison, by order of the House of Commons, by the *Commons' Officer* of the Black-Rod, and the prohibition which three or four other officers and other persons whatsoever, not to receive or detain them, is an apparent breach of the rights and privileges of the House of Commons: And they have therefore called them to be released into the custody of the Sergeant at Arms attending this House, and have committed them to the Tower.

"As for the Parliament-Roll of the first of King Henry the IVth, called to be read by your Lordships at the last conference, but not applied, the Commons apprehend it doth not concern the case in question: For that this Record was made upon occasion of judgments given by the Lords, to depose and imprison their lawful King; to which the Commons were not willing to be made Parties. And therefore the Commons conceive it will not be for the honour of your Lordships to make further use of that Record.

"But we are commanded to read to your Lordships the Parliament-Roll of a 4th III. N. 6. which, if your Lordships please to consider, they doubt not but your Lordships will find occasion to apply it to the present purpose."

Ordered, The Thanks of the House be given to the Speaker, for his care in issuing the Warrant for retaining the persons committed yesterday into custody.

The Sergeant at Arms ordered to be sent to the Tower; and the other Sergeant at Arms attending, was ordered to apprehend him for betraying his trust, in not executing his office, in bringing the persons committed yesterday to his custody, to the bar of the House.

An Address ordered to be prepared to be presented to his Majesty, to desire a new Sergeant at Arms to attend the House.

Saturday, June 4, 1675.

Mr. Secretary Conway acquainted the House, that it was his Majesty's desire, that the House would adjourn till four of the clock in the afternoon, and that both Houses should at that time attend him in the Banqueting-house at Whitehall.

A debate arising touching the removal of John Popham, Esq. Sergeant at Arms in ordinary, attending the House yesterday, the further debate thereof was adjourned till five of the clock in the afternoon. And then the House adjourned till four in the afternoon.

In the Afternoon,

The House then met at the time they adjourned to, and went in a body to his Majesty at Whitehall; and the House of Lords being also present, his Majesty made the following Speech:

My Lords and Gentlemen,

"YOU may remember, that at the meeting of this Session I told you, no endeavour would be wanting to make the convenience of this Parliament agreeable. I am very glad to perceive that is quickly shewn you the truth of what I then said; but I hope that you are not deceived, that the intent of all these endeavours is only to procure a dissolution. I myself I look upon it as a most malicious design of those who are enemies to me and the Church of England; and were the contrary known, I should not doubt but the dislike of their brethren would alone be a means of bringing the House in a good understanding. But I now I cannot provide any way to be service to the delivery of it, I will tell you plainly my opinion, that the course of coming to any conclusion without your consent, cannot be without admitting of free conference; or may come to be another by the reason then offered, or make me to judge by the differences, when all hath been said in both Houses which the matter will afford. For I do not see how I can possibly be grown to differers in the whole Kingdom, if I can prevent it; and I am sure my judgment shall always be impartial between my two Houses of Parliament. But I will tell you now, that should you be in debate about your privileges, I will not suffer my own to be involved. I have nothing more to say to you at this time, but to desire, as I did when we last met, that you would get together, and not suffer ill men to divide to hinder the House from a happy conclusion.

[The House of Lords presented an Address to his Majesty, to remove the Lieutenant of the Tower; whereas the Lord Treasurer reported his Majesty's answer, viz. "That his Majesty had considered the circumstances of the matter, and is not satisfied how with justice he can remove him."] "

The House then took into consideration his Majesty's Speech, and resolved, *minus contradietione*, That the humble Thanks of this House be returned to his Majesty, for the gracious expressions in his Speech this day made to both Houses of Parliament; and such Members of this House as are of his Majesty's Privy-Council are desired to present the humble Thanks of this House to his Majesty.

Resolved, That it doth not appear to this House, that any Member thereof hath either sustained or promoted the difference between the two Houses of Parliament; or in asserting the Rights of the Commons of Eng-

land, and the privileges of this House; or to have done any thing inconsistent with his duty, or the trust reposed in him. And then adjourned to Monday, June 7.

On Monday, June 7, the House resolved, That what Sergeant Popham did in detaining the four Lawyers into his custody, and concluding them to the Tower of London, was in pursuance of his duty, and by the order of the House; and the further debate concerning the said Sergeant at Arms was adjourned till Wednesday morning.

A copy of an order from the House of Lords for the hearing Counsel in the case of Sir John Fagg, a Member of this House, to-morrow morning, was then read and debated: And,

Resolved, That as to the case of appeal brought against Sir John Fagg, in the House of Lords, he shall have the protection and assistance of this House.

Resolved, *non. est*. That if any person or persons shall be aiding or assisting in putting in execution any sentence or judgment that shall be given by the House of Lords, upon the Appeal brought by Dr. Sturley against Sir John Fagg, a Member of this House, such person or persons shall be adjudged and taken to be betrayers of the rights and liberties of the Commons of England, and the privileges of this House; and shall be proceeded against accordingly.

Ordered, That their Votes be made publick, by setting them up in *Whitehall*, and in the Lobby of this House; and the Clerk of the House to take care so to do.

In the afternoon the House proceeded in the further consideration of several matters for the preservation of their rights and privileges, and resolved, *non. est*. That no person committed by order or warrant of this House, for breach of the privileges or contempt of the authority of the House of Commons, by order or warrant of the House, shall not make any return thereof, or yield any obedience thereto, before he hath first acquainted the House therewith, and received their order and direction how to proceed therein.

Ordered, That their resolutions be immediately sent to the Lieutenant of the Tower; and then the House adjourned.

Tuesday, June 8, 1675.

A message sent to the Lords to remind them of the last conference; and for a conference upon the subject-matter delivered by the Lords at the last conference.

Sir John Rokeby informing the House, that he had received the four Lawyers committed to his custody by the House, and desired to deliver them to the *Commons' Officer* of the Black-Rod; and that he was frieved left night with four Writs of Habeas Corpus, to bring the said four Lawyers before the King and his Parliament at *Whitehall*, this morning, and craved the advice of the House what to do therein:

Ordered, The Thanks of the House be given to the said Sir John Rokeby for his behaviour therein; and Mr. Speaker intimated to him, that he should forbear to return the said Writs of Habeas Corpus, which were read and debated; and the further debate thereof was adjourned till to-morrow-morning, and a Committee appointed to search the Lords Journals to see what hath been done in the case of the four Lawyers, the Writs of Habeas Corpus, and Mr. Sergeant Popham; and to search for precedents on the Writs of Habeas Corpus, and adjourned.

Wednesday, June 9.

Sir Thomas Clarges reports from the Committee, to whom it was referred to search for precedents touching Writs of Habeas Corpus returnable in Parliament; that the Committee had found several precedents of Writs of Habeas Corpus returnable in Parliament, and considered of them: And that the Committee thereupon had agreed upon four Resolves to be presented to the House, which he read in his place, and afterwards delivered the same in at the Clerk's table, where they being twice read, were upon the question severally agreed to, and are as follow:

Resolved, *non. est*. 1. That no Commissioners of England, committed by the order or warrant of the House of Commons, for breach of privilege, or contempt of the authority of the said House, ought, without order of the House to be by any Writ of Habeas Corpus, or any other writ, to try whatsoever he shall be accused and answer, or receive any determination in the House of Peers, during that Session of Parliament wherein he is committed.

Resolved, *non. est*. 2. That the order of the House of Peers for the issuing out the Writs of Habeas Corpus concerning Mr. Sergeant Popham, is in defiance and illegal; for that it is general, and expressio in particular cause of privilege, and commands the King's Great Seal to be put to writs not returnable before the said House of Peers.

Resolved, *non. est*. 3. That the Lord-Keeper be acquainted with these resolutions, to the end that the said Writs of Habeas Corpus be superseded, as contrary to law and the privileges of the House.

Resolved, *non. est*. 4. That a message be sent to the Lords to acquaint their Lordships, that Mr. Sergeant Popham, Sir John Churchil, Mr. Sergeant Pemberton, and Mr. Charles Farrow, were committed by order and warrant of this House for manifest breach of the privilege, and contempt of the authority of this House.

Ordered, That Col. Birch do go up to the Lords with a message, that a conference be defined upon the subject-matter of the last conference.

A message was this day sent from his Majesty in the House of Lords, by Sir Edward Gardiner, Officer of the Black-Rod, commanding this honourable House to attend his Majesty forthwith in the House of Peers; and accordingly Mr. Speaker went up with the House, where his Majesty was pleased to make the following Speech to them:

My Lords and Gentlemen,

I think I have given sufficient Evidence to the World, that I have not been wanting on my Part, in my Endeavours to procure the full Satisfaction of all my Subjects, in the Matters both of Religion and Property: I have not only invited you to those Considerations at our First Meeting, but I have been careful, through this whole Session, that no concern of my own should divert you from these.

Besides, as I had only designed the Matter of it to be the pressing of good Laws, for the curing of them, I have already wasted much longer than I intended, and should have been contented still to have continued my Expectations, had there any Hopes remained of a good Conclusion. But I must confess, the ill Drivings of our Enemies have been too prevalent against those good ones I had proposed to myself, in behalf of my People, and such unhappy Differences between my two *As yet* are grown to such a Height, that I find no possible means of putting an End to them, but by a Protraction. Is it with great unwillingness that I make use of this Expedient, having always intended to Adjournment for the preferring of such Bills as were undisturbed. But my *As yet* are, that by this Means the present Occasion of Differences being taken away, you will be so careful hereafter of the Public, as not to look one upon, nor to revive the old.

I intend to meet you here again in Winter, and have desired my Lord Keeper to prorogue you till the thirteenth Day of October next.

On the 13. 1675, the King came to the House, and began thus:

My Lords and Gentlemen,

I meet you now with more than an usual Concern for the event of this Session; and I know it's not what may be reasonably expected from the Care I have for the Preservation of the Government. The Causes of the ill Protraction, as I for my Part do not desire to remember, so I hope no Man else will, unless he be to learn from thence how to avoid the like Occasion for the future. And I pray consider how fatal the Consequences may be, and how little Benefit is like to rebound to the People by it. However, if any of that Kind shall arise, I desire you would stir those Debates, tell you have brought such publick Bills to Perfection, as may conduce to the Good and Safety of the Kingdom.

[The rest of the Speech relates to his Majesty's recommending the Society of the Protestant Religion, the Supply for building Ships, and publick Debts, &c.]

Then the Lord Finch, by his Majesty's Order, made a Speech to both Houses, recommending Unity, and making good Laws, and the Care of Religion, &c.

The Earl of Shaftesbury's Speech in the House of Lords, upon the Debate of appointing a Day for the hearing Dr. Sturges's Cause, the 20th of October, 1675.

My Lords,

On the 11. All is at Stake, and therefore you must give me Leave to speak freely before we part with it. My Lord Bishop of Salisbury is of Opinion, *That you should never appoint a Day to consider what to do upon the Petition, when to appoint a Day of bearing;* and my Lord Keeper, for I may name them as a Committee of the whole House, tells us in very eloquent and studied Language, *That he will propose a Day for his Noble Lord's Cause, and much less offensive and injurious to our own Privileges, than that of appointing a Day of bearing.* And I beseech your Lordships, do you not allow all these last Words except some shewable Proposal! But it ended in this: *That your Lordships should appoint a Day, say, a very long Day, is another thing you must not do.* And my Lord hath intended to convince you, that this is your only Course, by several undeniable Reasons, the first of which is, *That 'tis against your Jurisdiction to have this Cause, which is not proper, before us, nor ought to be referred by us.* To this, my Lords, give me Leave to answer, That I did not expect from a Man professing the Law, that after an Answer by Order of the Court was put in, and a Day had been appointed not hearing, which by these Accidents was set aside, and the Plaintiff moving for a second Day to be assigned, that ever, without hearing Counsel of both Sides, the Court did enter into the Merit of the Cause. And if your Lordships should do it here in a Cause attended with the Circumstances this is, it would not only be an apparent Injustice, but a plain *Subterfuge*, to evade a Point you shall see maintain.

But my Lord's second Reason speaks the Matter more clearly, for this is, *Because 'tis a doubtful Case, whether the Commons have not Privilege, for this reason, my Lord would have you to appoint a further, and a very long Day to consider of it: Which, in plain English is, that your Lordships should confide upon your Books, that you conceive it on second Thoughts a doubtful Case, for so your appointing a Day to consider will do; and that for so other Reason, but because my Lord-Keeper thinks it so: which I hope will not be a Reason to prevail with your Lordships, since we cannot yet, by Experience, tell that his Lordship is capable of thinking your Lordships in the right, in any Matter against the Judgment of the House of Commons, 'tis to hard a Thing even for the ablest of Men to change in Habits.*

But my Lord's third Reason is the most admirable of all, which he offers unanswerably, viz. *That your Lordships are all combined in your Conclusion, that this (if perfected) will undo a Branch.* I beseech your Lordships consider, whether this Argument, thus applied, would not overthrow the Law of Nature, and all the Laws of Right and Property in the World: For 'tis an Argument, and a very good one, that you should not stand or insist on Claims, where you have not a clear Right, or where the Question is not of Conscience and Merit, in a Matter that may produce a dangerous and pernicious Breach between Relations, Persons, or Bodies Politick, joined in Interest and high Concerns together. So, on the other Hand, if the Obstinacy of the Party in the wrong, shall be made an unanswerable Argument for the other Party to receive and give up its just Rights; how long shall the People keep their Liberties, or the Princes or Governors of the World their Privileges? How long shall the Husband maintain his Dominion, or any Man his Property, from his Friend's or his Neighbour's Obstinacy? But, my Lords, when I hear my Lord-Keeper open so eloquently the fatal Consequences of a Breach, I cannot forbear to fall into these Considerations how it comes to pass, that if the Consequences be so fatal the King's Ministers in the House of Commons, of which there are several that are of the Cabinet, and have daily Access to his Majesty, and have the Direction and Tract

of his Affairs, I say, that none of these should preclude these Consequences there, or give the least Stop to the Career of that House in the Business; but that all the Votes concerning this Affair, may, even that very Vote, *That no Appeal from any Court of Equity is acceptable by the House of Lords,* should pass unopposed. And yet all the great Masters with us here, the Bishops and other Lords of greatest Dependence on the Court, content this Point, as it is, *as yet* *ad hoc* *factum*. I hear his Majesty in Justice, but you would not declare against Appeals in Parliament. I cannot much blame the Court, if they think (the Lord-Keeper and the Judges being of the King's name, and as his Power to change) that the Justice of the Nation is late enough, and I, my Lords, may think so too, during the King's Term, though I hear Scotland, not without Reason, complain already. Yet how future Princes may see this Power, and how Judges may be made not Men of Ability or Integrity, but Men of Relation and Dependence, and who will do what they are commanded, and all Men's Causes come to be judged, and Editors disposed on, as great Men at Court please.

My Lords, the Confirmation of our Government hath provided better for us, and I can never believe so wise a Body as the House of Commons, will promise that foolish Woman which plucks down her House with her Hands.

My Lords, I must preface in the next Place, to say something to what was offered by my Lord Bishop of Salisbury, a Man of great Learning and Abilities, and always vested in a stronger and clearer Way of reasoning, than the Bishops of this noble Lord answered before did: accustom him so; and that Reverend Prelate hath said the Matter very fair upon two Heads:

The first, *Whether the Hearing of Causes and Appeals, and especially in this Point, where the Admiralty Court Privilege, be so material to us, that it ought not to give way to the Rights of State, or greater Affairs that shall be of our time?* The second was, *If this Bishops be of this Account, yet whether the appointing a Day to consider of this Petition, would prevent that Grievance and Prejudice to your Cause?*

My Lords, to this give me Leave in the first Place to say, that this Matter is no less than your whole Jurisdiction, and your Jurisdiction is the Life and Soul of the Dignity of the Peerage of England; you will quickly grow barren, if you grow idle. You have now the greatest and most useful End of Parliaments principally in you, which is not to make new Laws, but to redress Grievances, and to maintain the old Land-Marks. The House of Commons Business is to complain, your Lordships to relieve, not only the Complaints from them that are the Eyes of the Nation, but all other particular Persons that address to you. A Land may grow under a Multitude of Laws, and I believe such does; and when I hear you so multiply, these odious Sources that Directions and Security to the People, I look upon it as the greatest and the Weakness of the latter Age, if not worse, the Effect of the Deceits of ill Men; that it is given a general Opinion, that where there is not a particular Direction in some Act of Parliament, the Law is defective, as if the Common Law had not provided much better, firmer, and plainer, for the Peace and Quiet of the Nation, than intricate, long perplexed Statutes do; which has made Work for the Lawyers, given Power to the Judges, lessened your Lordships Power, and is a good Measure to hinder the Security of the People.

My Lord Bishop tells us, *That your whole Jurisdiction is not in question, but only the Privilege of the House of Commons, of their Members not appearing at your Bar.* My Lords, were it so, were it that for Justice and the People's sake you must not to part with it, flow for a Privilege of the House of Commons, their Servants, and those they owe obedience to, *Wilmot's Hall* may with grief tell your Lordships. And the false Privilege of their Members being not sued, must be allowed by your Lordships as well; and what a Palace of Justice this would prove, whilst they are Lords for Life, and you for Intimacy, let the World judge: For my Part, I am willing to come to Conference whenever the Dispute shall begin again; and dare undertake to lose your Lordships, that they have neither Precedent, Reason, nor any judicable Pretence to these against us; and therefore, my Lords, if you part with this undoubted Right merely for sitting, where will the sitting stop! And, my Lords, we are sure it doth not stop here, for they have already, *Memor. Casuarinae*, voted against your Lordships Power of Appeals from any Court of Equity: so that you may plainly see where this Caution and Reason *ad hoc* means to stop; not one jot short of losing your whole Jurisdiction aside, for the same Reason of saving the King's Money, of not interrupting good Laws, and whenever this word of Necessity would all Beach, upon what Score so ever; and your Lordships plainly for the Beach will be as well made upon your Jurisdiction in general, as upon this; so that when your Lordships have appointed a Day, a very long Day, for to consider whether Dr. Sturges's Cause be not too hot to handle; and when you have done the same for Sir Nicholas Stanten, whose Pension I hear is coming in, your Lordships will proceed to a Vote, to lay all private Business aside for six Weeks. For the Privilege of private Business hath stood upon this last Age, upon that which a your most publick Duty and Business is; namely, the Administration of Justice. And I can tell your Lordships, besides the Reason that leads to it, that I have some Intelligence of the designing such a Vote. For on the second Day of your Sitting, at the Rising of the Lords House, there came a Gentleman into the Lobby, belonging to a very great Person, and stood in very great Haite, *After the 1. he says? Please they please the Vote?* And being asked, *What Fate?* He answered, *The Fate of an private Business for his Wife.*

My Lords, if this be your Business, let them you see; if we are to postpone our Jurisdiction for fear of offending the House of Commons for its Words, that they in the interim may pass the Money, and other acceptable Bills that his Majesty thinks of Importance, are so many wife Men in the House of Commons to be led asleep, and to pass all this acceptable Things; and when they have done, so far as we let look upon them?

Will they not remember that next time there is want of Money; or may not they rather be assured by their Ministers that are amongst them, and go on to unanimously with them, that the King is on their Side in this Conveyance? And when the publick Business is over, our first will be too short to make a Breach, or vindicate ourselves in the Matter. And then I beg your Lordships, where are you, after you have suffered but the

the last Session your right of Judicature, so high, even in this point; and after the House of Commons had gone to high against you on the other hand, as to put up their declaration and remonstrances on Wyndham-Hall doors; the very next Session after, you postpone the very same cause; and not only that, but all Judicatures whatsoever? I beseech your Lordships, will not thus prove a fixed prebend and confession against yourselves? 'Tis a Maxim, and a rational one among the Lawyers, *That no possessor of any Estate has any remedy, if there be a third party there with some equity.* My Lords, in consequence, I humbly repeat I have given a sufficient answer to my Lord Bishops second question; *Whether the appointing a day to consider about you will do much that Princes, or of their confessions in your right?* For it is a plain conviction, that it is a doubtful case, and that infinitely stronger than if it were a new thing to you, never heard of before: for it is the very same case, and the very same thing, divided in that case, that you formerly ordered, and so strongly asserted, in that upon time, and all the deliberation imaginable, you declare yourselves to become doubtful, and you put yourselves out of your own hands, into that power that you have no reason to believe on your side in this question.

My Lords, I have said the duty impossible to his Majesty, and shall with all submission now say to any thing he should think of importance to his affairs: but in this point it is to offer the constitution of the Government, if you are asked to lay the side, and there is no reason of State can be an argument to you. Lordships to turn yourselves out of that interest you have in the constitution of the Government: 'tis not only your concern that you maintain yourselves in it, but 'tis the concern of the poor ill man in England, that you keep your station: 'tis your Lordships concern, and that so highly, that I will be bold to say, the King can give you a set of a request if he recompens for it. What are empty titles? What is great power, or riches, and a great estate, whereas I have no more of great property? 'Tis the constitution of the Government, and maintaining it, that secures your Lordships, and every man else, as what is, hath, the power of Law, the birth-right of the People be maintained, has a fair prospect before him for himself or his posterity; but the greatest title, with the greatest perfect power and riches, is but a mere creature, and maintains only an absolute despotism, no otherwise than by ferule and low flattery, and upon uncertain terms.

My Lords, 'tis not only your Lordship, but the Interest of the Nation, that you maintain your rights; for let the House of Commons and Gentry of England think what they please, there is no Prince that ever governed without Nobility or an Army: if you will not have one, you must have neither, or the Ministry cannot long support, or keep still from rambling into a Democratical Republic. Your Lordships and the People have the same power, and the same care. My Lords, would you be so kind to let me know? 'tis all way to it, to put yourself in one of a future capacity, to be considerable in his service. I do not find to flatter, or in modern expressions, but that 'tis better, and a man is much more regarded that is a caprice, and opportunity to serve, than he that has wholly depraved himself of all for his Princes service. And I therefore desire, that I will serve my Prince as a Peer, but will not deliver the Peoples voice to him.

My Lords, I have heard of twenty foolish models and expedients to secure the Justice of the Nation, and yet to take this right from your Lordships, as the King by his commission appointing Commissioners to hear Appeals, or that the Twelve Judges should be the pretence, or that persons should be appointed by the Parliament, whereas all are not only to take away your Lordships full rights, that ought not to be sacred any more than any other part of the Government, but are in themselves, when well weighed, ridiculous: I must deal freely with your Lordships, those things could never have been in men's minds, but that there have been some kind of process that has given the full rule to it. Pray, my Lords, forgive me, if on this occasion I put you in mind of Committee-diners, and the scandal of it, those droves of Ladies that attend all causes 'twas come to that pass, that men were used or borrowed of their friends handsome sisters or daughters to deliver their Petitions: but yet for all this, I must say that your judgments have been fixed, unless in one or two cases; and that we owe too to that Bench, from whence we now apprehend most danger.

There is one thing I had almost forgot to speak to, which is the separation of law, the large space which is a region of State time; and to that, I pray, give me leave to say, if this be not a time of leisure for you to vindicate your privileges, you must never expect one. I could almost say, that the famous good agreement, and consent that is to be prayed for as well other times, may be fatal to us now; we owe the place of their last two years, and the disengagement from the French Interest, to the two Houses differing from the sense and opinion of Whigland: so as to a time, the thing in the world this Nation has most reason to apprehend, is a general care, which cannot now happen without very advantageous terms to the French, and disadvantageous to the House of Lords.

When the King's great Councils, and if, I have a right to differ, and give contrary counsel to those that are more about him: I fear they would make a general point, I am sure I would advise against it, and hinder it at this time by all the ways imaginable. I heartily wish nothing from you say and weight and reputation to those count is who would still the French. No money for ships, no preparations you can make, nor personal alliances our Prince has here, was secure us from the French, if they are at leisure. He is grown the most potent of us all at sea: he has built 24 ships this last year, and has 30 more in number than we; besides the advantage, that our ships are all out of order, and he is exactly provided for, that every ship has his particular three-hour. 'Tis incredible the money he hath, and is following in making harbours; he makes Nature itself give way to the vastness of his expense; and after all this, still in France he will, to intend upon his affairs, be thought to make all these preparations to sit over land, and fill on the back of Hungary, and batter the walls of Konstantinople. 'Tis not possible he should oversee his Interest in seizing of Ireland, a thing so feasible to him, if he be master of the Seas, as he actually now is; and which, when attained, gives him all the Southern Mediterranean, East and West-Indie Trade, and renders him both by sea and land, an excellent harbinger, perpetual Master of the Seas without dispute?

Vos. VII.

My Lords, to conclude this point, I fear the Court of England is greatly mistaken in us, and I do not wish then the reputation or the concurrence of the Kingdom, and that out of the most sincere loyalty to his Majesty, and love to my Nation.

My Lords, I have but one thing more to trouble you with, and that precedenture is a consideration of the greatest weight and concern, both to your Lordships and the whole Nation. I have often seen in this House, that the arguments with strength reason, and most convincing to the Lay-Lords in general, have not had the same effect upon the High-bench, but that they have unconsciously gone against us in matters, that many of us have thought essential and undoubted rights: and I consider, that 'tis not possible that men of great learning, party, and reason, as your Lordships are, fit not have the same case of doing right, and the same conviction what is right, upon clear reason offered, that other your Lordships have. And therefore, my Lords, I must necessarily think we differ in principles; and then 'tis very easy to apprehend, what is the clearest sense to men of my principle, may not at all periods be effect the confidence of the last man of a different one. I put your Lordships the case plainly, as 'tis now before us. My principle is, *That the King is King by Law, and by the same Law that the law now obliges itself, and so it becomes the concern of every man in England, that has but his liberty, to maintain and defend, to his utmost, the King on all his rights are prerogatives.* My principle is also, *That the Lords are Lords, as the House and Rights belonging thereto, are a distinct part of the ancient constitution, and established by the same Law.* The King governing and administering Justice by his House of Lords, and advising with both his Houses of Parliament in all important matters, is the Government I own, I am bound under, and an obliged to. If ever there should happen in future ages [as the God forbid] a King governing by an Army, without his Parliament, 'tis a Government I own not, am not obliged to, nor was bound under. According to this principle, every body must think that he is a subject, and not equally to prefer the frame of the Government, as all the parties in it, and cannot finally his confidence to give up the Lords House for the service of the Crown, or to take away the full rights and privileges of the House of Commons to please the Lords. But there is another principle got into the world, my Lords, that hath not been long there; for Archbishop Laud was the first author that I remember of it, and I cannot add that the Jansen, or indeed the Popish Clergy, have ever owned it, but some of the Episcopal Clergy of our English Isle; and 'tis said, as 'tis now, to the most dangerous, detractions Doctrine to our Government and Law, that ever was. 'Tis the first of the Canons published by the Convocation 1640. *That Absorbtion is of Divine Right.* This Doctrine was then preached up, and maintained by Bishops, Ministers, and others; as present years, by a book published by Dr. Salkeld, Bishop of Lincoln, under the name of Archbishop Usher, and now much it is spread among our dignified Clergy, is very clearly known. We all agree, that the King and his Government is to be judged for Christian's sake, and that the divine precepts require not only here, but in all parts of the world, obedience to lawful Governments. But that this family are our Kings, and this particular frame of Government is our lawful constitution, and all get us, is owing only to the particular Laws of our Country. This Laudian Doctrine was the root that produced the Bill of Tall left Session, and some very pernicious Oaths, that are of the same nature with that, and yet insisted by several Acts of the Parliament.

In a word, if this Doctrine be true, our *Allegiance Oath* is of no use, our Oaths are but mere words among ourselves during the Kings pleasure. Monarchy, if of divine right, cannot be a kind of monarchy by human Laws; say, what's more, cannot last itself: and all our claim of right by the Law, or constitution of the Government, all the jurisdiction and privilege of this House, all the rights and privileges of the House of Commons, all the properties and liberties of the people, are to give way not only to the Interest, but the will and pleasure of the Crown. And the best and worthiest of men, holding this principle, must soon to deliver up all we have, not only when reason of State, and the separate Interest of the Crown require it; but when the will and pleasure of the King is known, would have it so. For that must be, to a man of that principle, the only rule and measure of Right and Justice. Therefore, my Lords, you see how necessary it is, that our principles be known, and how fatal to us all it is, that this principle should be suffered to spread any further.

My Lords, to conclude, your Lordships have seen of what consequence this matter is to you, and that the appointing a day to consider, is no less than declaring yourselves doubtful, upon second and third thoughts; that you put yourselves out of your own hands, into a more than a moral probability of having this Session make a precedent against you. You let your duty to yourselves and the people; and that 'tis really not the Interest of the House of Commons, but may be the inclination of the Court, that you lose the power of Appeals: but I beg your House may not be seduced by, but that you Lordships would take in this affair the only course, to profess yourselves, and appoint a day, this day three weeks, for the hearing of Dr. Storks cause, which is my humble motion.

Saturday, Nov. 13. 1675. An order from the Lords to bring Sir John Fagg's cause to-morrow morning, was this day read in the House of Commons, and debated, and the further debate thereof adjourned till Monday morning next.

Monday, Nov. 15. The House resolved, That the petitioning Appeals in the Lords House, by Dr. Thomas Stork against Sir John Fagg, a Member of this House, is a breach of the privileges of this House; and that the said Sir John Fagg do not make any defence at the Lords Bar, in the said Appeal; and the further debate thereof was adjourned till to-morrow morning.

Tuesday, Nov. 16. Adjourned the further debate of Sir John Fagg's Interest till to-morrow morning; and on Wednesday, adjourned the further debate till Thursday, when Sir John Fagg's business was referred, and resolved, That his cause should be debated on the 17th, for avoiding differences between the two Houses upon this difference till Friday morning.

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Sir William Crofts reports from the Committee, to whom it was referred to prepare and draw up reasons to be offered at the conference, to be defined with the Lords, for avoiding the confusion of opposing the difference between the two Houses; and a paper of reasons accordingly by the said Committee, to be reported to the House, being read; and the same being agreed to, is as follows, viz.

His Majesty having recommended to us, at the opening of this Session of Parliament, the avoiding this difference, if possible, and if it could not be prevented, that then we should defer their debate till we had brought such public bills to perfection, as may conduce to the good and safety of the Kingdom. The Commons affirm it a great misfortune, that contrary to that most excellent advice, the proceedings in the Appeal, brought the last Session against Sir John Egge, by Dr. Shirley, hath been renewed, and a day set for hearing the cause; and therefore the Commons have judged it this half-way, before they enter into the argument of *Infamia* of their rights in this matter, to propose to your Lordships the putting off the proceedings in this matter for some short time; that so they may, according to his Majesty's advice, give a dispatch to some bills now before them, of great importance to the King and Kingdom; which being finished, the Commons will be ready to give your Lordships such reasons against those proceedings, and in defence of their rights, as we hope may satisfy your Lordships that no such proceedings ought to have been.

Resolved, That a message be sent to the Lords, to defer a conference, to preserve the good correspondence between the two Houses.

Resolved, That whatsoever shall prosecute any Appeal before the Lords, against any Committee of England, from any Court of Equity, shall be deemed a betrayer of the rights and privileges of the Commons of England; and shall be proceeded against accordingly; and the relation of Court to be affected in the *Lobby*, *Wyndward*, *back-gate*, and all Inns of Court and Chancery; and then adjourned till next morning, *New the Sixth*.

Die Sab. Nov. 10.

Ordered, That Dr. Thomas Shirley be taken into custody by the Sergeant at Arms attending this House, on all Sir Nicholas Stantis, for serving Mr. Crofts with an order to attend the Lords; and then adjourned to Monday Nov. 12.

On Saturday Nov. 10. 1675, Dr. Thomas Shirley appeared at the bar of the House of Lords, and his Counsel Mr. Wallis appeared, who would have excused his absence, but was ordered to appear again on Monday morning next to plead the cause; and the other two Counsel (one being as the country, and the other sick) were excused, and the said Dr. Shirley, Sir Nicholas Stantis, and Mr. Wallis were ordered to have the protection of the House: And upon Debate of the Commons Voted made yesterday.

Ordered, That the paper posted up in several places, signed by William Goldiers, Cler. Down. Com. against the Judicature of the House of Peers, in case of Appeals from Courts of Equity, is illegal, unparliamentary, and tending to the dissolution of the Government. And then upon consideration of the 1st vote of the Commons, it was proposed by Lord Mordaunt to make an Address to his Majesty to dissolve the Parliament, and call another and frequent Parliaments; and upon debate thereof, about eight o'clock at night they came to this question, and carried it by two voices only; That there should be no Address; the numbers being fifty and forty only; and then adjourned to *Monday*.

On which day the House being met, a message was sent by his Majesty, for the House to attend him forthwith in the House of Peers; which the House accordingly did, when his Majesty passed three Bills, and the Lord-Keeper, by his Majesty's order, prorogued both Houses of Parliament, till

the 15th day of February next, wWednesday, 1676, which ended the year 1675.

The Profection, with several of several I ords for the Dissolution of this Parliament, entered in the Lords Journal, November 22, 1675, the day the Parliament was prorogued.

WE whose names are under-written, Peers of this Realm, having proposed, That no humble Address might be made to his Majesty from this House, that he would be graciously pleased to dissolve this Parliament; and the House having carried it in the negative: for the satisfaction of our loyal intentions towards his Majesty's service, and of our true respect and obedience to that honourable House; and to show that we had no sinister and uncharitable ends in this our humble proposal, do with all humility herein set forth the grounds and reasons why we were of opinion, that the said humble Address should have been made.

1. We do humbly conceive, that it is according to the ancient Laws and Statutes of this Realm, that there should be frequent and new Parliaments; and that the practice of several years hath been accordingly.

2. It seems not reasonable, that any particular number of men should for many years improve to great a trust of the people, as to be their Representatives in the House of Commons; and all other the Gentry and the Members of Corporations of the same degree and quality with them, should be so long excluded. Neither, as we humbly conceive, is it advantageous to the Government, that the Counties, Cities and Boroughs should be confined for so long a time to such Members as they have once chosen to serve for them, the mutual Correspondence and Interests of those who chuse and are chosen, admitting of great variations in length of time.

3. The long continuance of any such as are entrusted for others, and who have to great a power over the pulse of the Nation, must, in our humble opinion, naturally endanger the producing of factions and parties, and the carrying on of particular Interests and Designs, rather than the public Good.

And we are the more confirmed in our desires for the said humble Address, by reason of this unhappy breach fallen out betwixt the two Houses, of which the House of Peers hath not given the least occasion; they having done nothing but what their offices and professions have in all times done, and what is according to their duty, and for the Interest of the People that they should do. which notwithstanding, the House of Commons have proceeded in such an unprecedented and extraordinary way, that it is, in our humble opinion, become altogether unparliamentary for the two Houses, as the said House, justly to punish their great and good ends for which they were called.

For this reason, we do enter our protestations against, and dissent unto, the said Vote.

Buckingham,	Cheshamfield,	Hallifax,	Mahan,
Winchester,	Stamford,	Yarmouth,	De la Mer,
Salisbury,	Bark,	Newport,	Townsend,
Bedford,	Chandos,	Sandy,	Grey of Bal-
Derby,	Shutcliffe,	Wharton,	fin.
Westminster,	Faulconbridge,	Petre,	

They were all the Lords that were in the House early enough to sign the protestation before the Parliament was prorogued.

XXXII. Proceedings against Mr. Francis Jenker, for a Speech made by him on the *Hustings*, at *Guildhall*, on *Midsummer-day*, 1676, 27 Car. II.

[Published by his Friends.]

MR. Jenker having been a Trader for many years, and observing the daily decay of trade in the City, occasioned by such mischief, as is set out in the industry of its inhabitants, but only at the power of the Government to redress; and that did require a more speedy redress than a Parliament prorogued for fifteen months could afford: after having in vain petitioned the Lord-Mayor for a Common-Council, that might consider of a Petition about trade, and of a hearty zeal for the good of the City, as well as encouraged by the confidence and desire of many body Citizens, the liberty returned to the Lord-Mayor, Aldermen and Common-Council, by the Six vote of the 15th of this King, concerning Petitions, the votes of a majority of temporal Lords at the last Session, together with the unparliamentary reasons given in their prosecution; did at the Folk-mote (or Common-hall) holden the 24th of June last past, in the *Guildhall* of London, thus deliver himself:

Mr. Common Serjeant,

" IT seems a vain thing for this Court to be serious about the choice of Magistrates and Officers for the well government of this city; except they first take care to remedy those many mischiefs and grievances, which the city now groans under; and which seem to us to threaten the ruin and destruction of the whole; that if there be not some speedy redress, there will be little need of Magistrates and Officers, for there will be no city or people left here to be governed.

" Let us have once already been burnt to ashes, and firing is now become such a trade, that not only *London*, the Borough of *Southwark*, and the adjacent villages, but the Cities of *London*, *Birmingham*, *Town* corporate, and places of principal trade throughout the whole Kingdom, are perpetually in danger; so that no rational or considerate man amongst us

" can promise himself, his wife, his children, or estate one night's security, but they may all be devoured in the consuming flames, except some speedy and effectual course be taken.

" But this is not all, for were our houses secure from fire, yet such is the general decay of trade, if not remedied, as must unavoidably bring the whole city to poverty and ruin; and it is concerned, that this is a very much occasion'd by the French, who have had such great opportunities upon our Woolen Cloth, Stuffs and other Manufactures, that we have almost lost our trade with France. They have spoiled our trade with *Holland*, *Flanders*, and *Germany*, by a destructive war. They have ruined our trade at home, and begg'd many thousands of our honest and industrious Weavers, and best English Manufacturers and Traders, by the vast quantity of their Silks, and other unmercenary commodities imported hither. So that upon an exact balance of the trade between us and them taken, it has been demonstrated, that this city and Kingdom doth lose eleven hundred thousand pounds every year. By means whereof, they who in Queen Elizabeth's time might not be suffer'd to build men of war, are now grown so powerful at sea, as to be able to beat both *Dutch* and *Spanish*, and have made themselves in a manner sole masters of the *Mediterranean* Sea. And they are grown so presumptuous, as daily to affront our English Merchants, and foremen in his Majesty's own ports. The Provosts daily take our Merchant-ships, plunder others, strip, imprison and torment our seamen, to the great discouragement of our English Navigators, and almost ruin of the Merchant.

" I shall instance in but one thing more, but that is worse than all the rest; that is, the just apprehension that is upon the minds of good men, of danger to his Majesty's person, and the Protestant Religion. I had not spoken this at this time and place, but having the honour to

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"serve the City in Common-Council; I have endeavored at several times to bring these things before the Court, but could not. In the mid of the last Common-Council I did deliver my Lord-Mayer, that a Common-Council might speedily be held, to hear and consider of a petition about trade, introduced by a great number of citizens of good quality, and Mr. Lordship did then promise, that a Common-Council should speedily be held: But it is a good new face, and there have been many fines and lectures, but no Common-Council."

"Wherefore methinks it does become the wisdom and gravity of this Court, not to admit of any longer delay in a matter wherein their All is concerned. And I do humbly move, (and I conceive it is not only my duty, but the duty of the great part of this Court) that some Members of this Court may accompany the Sheriff and Mr. Common-Sergeant, before we proceed in any other matter, to wait upon my Lord-Mayer and the Court of Aldermen, to desire that a Common-Council might speedily be held, humbly to petition his Majesty, that for the quieting and satisfying the minds of his loyal people, and for remedy of the many mischiefs and grievances we now groan under, he would graciously be pleased (according to the Statutes of the 4th and 5th of Ed. III.) timely to call a new Parliament."

Scarcely were the words, a new Parliament, pronounced, but the greatest part of the Assembly cried out, *Well moved, well moved!* And then spoke up formally to the Sheriff, yet several amongst them spoke enough to draw a high approbation of what had been said, and not one word was spoken in contradiction; which when the Common-Sergeant took to prevent, is conceived) others speaking to the same matter, he spoke to this purpose:

"That what had been moved, seemed to be the general desire of a whole Court, and since the Gentleman that made the motion was pleased to join him with the Sheriff, and that he must either his opinion in the matter, it was this, That it was not so proper to carry up that message before they did proceed to these elections, as first to determine their elections, and then carry up an account of state and that together."

But many in the Court did insist upon the message, and desired a message to be sent up immediately, whereupon one of the Sheriff's spoke, and did acknowledge, "That what had been said by the Gentleman that spoke first, was true; but that he was an old citizen, and had long known Common Hall; and he did believe that the proper work of the day was the election of officers, and therefore he did desire that the Court would proceed, and not to carry up the message till after that was done." To which one replied, "That according to his utmost understanding, that Court was one of the ancientest, greatest, and most powerful Courts of this City, and although the customary business of this day were the choice of officers, yet that Court had cognizance of any thing whatsoever that did relate to the good of the City, and therefore it was conceived, that nothing was more proper at that time, than that which concerned the preservation of the City from any ruin."

Upon which the other Sheriff directing his discourse to the Assembly, said, "That what the Gentleman had moved there, was true, and not unknown to most of the persons there present; but that he was of his brother's opinion, that it was fit still to go on to the work of the day, and not to carry up that message till after the election."

Many persons being still dissatisfied, and calling for a present message to be sent up, the Gentleman who first moved the business, made it his request, "That since there seemed a difference touching the circumstance of time, that they would proceed to election, and carry up the message with the persons elected, as the Sheriff desired," to which the Common Hall unanimously agreed. Upon which, silence being made, the Common Hall proceeded to election of Sheriff and Aldermen, and first up an account thereof to the Lord Mayor and Aldermen by the Sheriff and Common-Sergeant, as it usual in such cases.

The Lord Mayor and Aldermen presently came down, and took their Seats in the Court of *Hatchings*, according to custom; upon which, the Common-Sergeant came forth to the front of the Court, and declared the names of the persons elected, and immediately gave back. Whereupon the Common Hall called out for an answer to their message, upon which, the Common-Sergeant stepping forward again in the presence of the Lord Mayor, Aldermen and Sheriff, said, "That he had acquainted his Lordship and the Aldermen with their request, and that his Lordship had commended him to declare unto them, that he would be ready to join with them in that or any other thing for the good of the City." And with that the Lord Mayor and Aldermen, who left the Court of *Hatchings*, and dismissed the Assembly.

After dinner, the Recorder, Sir *John Havel*, one of a great pretence of loyalty, but indeed a perfluous grudge against Mr. Jenyns, conveyed the news to *Whitfield*; where, with his usual train of *Rinwick*, he made such a dismal representation of the matter, and was so powerful in his eloquence, as to occasion both the Sheriff and some other of the City officers to be sent for, who were examined by the Lord Chief Justice *Ratford*, in the presence of the King, the Lord Chancellor, Lord Treasurer, Duke *Landradale*, and other Lords.

The Sheriff and two others made affidavits; but a copy of them could never be obtained.

Upon the 27th of June, Mr. Jenyns was summoned by a messenger to appear at the Council-board the next day, accompanied with many of his friends, he attended at the Lobby, near the Council-Chamber, according to his summons, and after some time was called in; but his friends pressing to follow him, (as it usual on such occasions) were kept out, and not one suffered to go in with him.

The King sitting in Council, the Lord Chancellor, Duke *Landradale*, and other Lord about them, the Clerk at an affidavit made by the two Sheriffs, the Common-Sergeant, and Sir *John Havel*, an Attorney; the following relation ensued:

That Mr. Jenyns, at a Council-Hall, in London, the 24th of June last past, did comply of *Whitfield*, and did deliver, that before they went upon any other business, in some Members of that Court might accompany the Sheriff and the Common-Sergeant to wait upon the Lord Mayor, then in the chamber, to desire that a Common-Council might be called to petition his Majesty, in the name of the City, to call a new Parliament.

The affidavits being read, the Council-board proceeded to this effect: Lord Chancellor. Sir, What say you to this matter?

Mr. Jenyns. I desire to know if this be all you have to charge against me!

A Lord. Then you make little of this, you will find it to be enough.

L. Chan. Sir, did you move for a Common-Council to petition for a new Parliament?

Mr. Jenyns. Is it any crime to petition for a new Parliament?

L. Chan. Answer to the matter in charge.

Mr. Jenyns. With the liberty of his Majesty and this Board, I will.

The King. Go on.

Mr. Jenyns. May I please your Majesty, of all the subjects you have—

A Lord. (interrupting him) Answer to the matter.

Mr. Jenyns. If his Majesty will be pleased to hear me, I hope you will.

King. Let him go on.

Mr. Jenyns. May I please your Majesty, of all the subjects you have, none are more loyal than your City of London, and as the City none more loyal than myself. And no man there did more desire, and, in my circumstances, all more, in order to your Majesty's Religion, than myself. And I do defy any citizens, or other whatsoever, to say I have forfeited my loyalty by any one individual act—

King. (interrupting him) Sir, you are not Lord-Mayor, and I am very well satisfied with the loyalty of the City, and that it needs no such outcries.

L. Chan. Speak to the matter.

Mr. Jenyns. May I please your Majesty, being summoned to a Court of Common Hall in London, which is a Court that consists of the main body of the City—

L. Chan. (interrupting him) Sir, you are under a double mistake; for first, it was not a Court, and next, it did not consist of the main body of the City of London.

Mr. Jenyns. With your Lordship's leave, it was a Court which did consist of all the *Livery* of the City of London, which, if I understand any thing, is the main body of the City of London. And every Member of that Court hath freedom to propose and debate any such matter or thing as he believes to be for the service of his Majesty, and the good of the City; and so man can use more understanding than God hath given him. And I assure your Lordship, what I then moved was according to the utmost of my understanding for his Majesty's service, and the good of the City. And, my Lord, if I were under a mistake, I had the fortune to have good company; for what I moved was approved by the whole Court.

King. It was not so.

Secretary. We have a deposition to the contrary.

Mr. Jenyns. It was so.

Other Lords. It was not so.

Mr. Jenyns. May I please your Majesty, if you have a hundred depositions to the contrary, if the matter of fact were so, it was so; and I do affirm it approved by the whole Court.

A Lord. How came you to be a Privy-Councillor?

Mr. Jenyns. I never had any such ambitious thought in my head.

A Lord. How came you then to meddle with matters of State?

Mr. Jenyns. I thought any of his Majesty's subjects, in an humble manner, might petition his Majesty for a remedy of any grievance whatsoever.

A Lord. Do you think any one may petition for a Parliament?

Mr. Jenyns. I believe they may.

The King. I know whole bodies you are, and I'll take care that some such as you shall have to do with the Government.

Secretary. Read. What was your name?

Mr. Jenyns. My Lady, what I spoke was not in a court, but openly in the face of a multitude, and therefore cannot wait a witness to attest it.

A Lord. Jail your word it was a Court, and now it is a multitude.

Mr. Jenyns. We Citizens pretend not to place our words so readily in form, but that there may be great mistake in them; but I think my expressions were no great alacrity: For though it were a Court, yet the persons there were no more ours, that it may not be very improper to term them a multitude. Yet, if I have filled in due expectation, I beg his Majesty's pardon. I know foretellers of the ruin of the City of London, and the powers and privileges of the Courts there; and foretellers also of the ruin of England; but what the powers and privileges of this Court are, I know not, and therefore shall desire to say little, lest I should unwillingly offend.

L. Chan. Sir, pray tell us, who advised you in this matter?

The King. Who advised you?

Mr. Jenyns. What I then proposed was consented to by the whole Court, and so became their Act, as I said before.

L. Chan. and others. Answer directly to the question, or declare you will not.

Mr. Jenyns. Since I for your Majesty and the Lords are angry, though I am not sensible that I have given you any just cause for it; I must not lay it out without advice, lest you should be more angry, and to some any particular person (if there were such) would be a man and unworthy thing, therefore I desire to be excused all further answer to such questions, since the law doth provide, that no man be put to answer to his own prejudice.

King. We will take that for an answer.

L. Chan. Since you name the law, by the law you shall be tried.

Mr. Jenyns. I thank you and this Board.

L. Chan. You may withdraw.

He immediately withdrew, and the room being cleared of all his friends, and other company, Mr. Jenyns was kept there for the space of an hour and an half, and after that, without being called in any more, was, by a warrant of the Council, sent to the prison of the Gatehouse within the Liberties of *Whitfield*. Soon after his commitment, he demanded of the Keeper a copy of the warrant by which he was committed; as he might, and by law ought to have. The Keeper gave him a promise of it, but delaying the performance for two days, Mr. Jenyns resolutely demanded it of him as his duty, but could not yet obtain it. Some time after, the Keeper lent him one voluntarily, by his man, with this excuse, That before he had positive order to deny him one, and now had to give it him.

The

carried in the Petition, came to Mr. *Yewin* in a disordered confusion, and told him, That he had committed a mistake in returning the Petition; That his Lordship had asked him for it, and would be very sorry with him if he had it not; That he had left his Lordship looking over some papers, and had taken that opportunity of coming for it; and desired that he might have it, to present him from his Lordship's displeasure.

Thus the Morning's action gave Mr. *Yewin* a great deal of reason to suspect the Secretary's to be a more contrivance, and only to fascinate the truth; yet he took no notice of what had then passed, but from the Petition (which was then a stone of his friends hands) that evening to him. Upon the second thoughts which his Lordship bestowed upon the matter of the Petition, he was better reconciled to it, and passed better than his ward in considering the precedents; for instead of passing upon them till the next Term, he was pleased to carry them and the Petition to the Privy-Council, the next Wednesday; where, tho' all the particulars are not known upon credit's informations, this was the substance of what passed:

His Lordship acquainted the Board with the Address that had been made to him, and moved, that the Petition might be there read. After it was read, his Lordship told them, that it had some appearance of law, and desired that the Attorney-General might give his opinion. Mr. Attorney told him, if it were law, his Lordship ought to grant it, if it were not law, then to deny it, if it were of such difficulty as he could not fairly himself, that then he should advise with the Judges.

His Lordship then moved for an order of Council for his direction in the matter, to which some of the Lords replied, That they were a Court of State, and not of Law, and that it did belong to him, as Lord Chancellor, to inform them of matters of law; Thereupon his Lordship, clapping his hands on his breast, said, I thank God I have courage enough to serve his Majesty.

About the latter end of July, some of Mr. *Yewin*'s friends attended his Lordship again, and offered him bail, insinuating upon the Writ of *M Habeas Corpus* as the subject's right; alleging to his Lordship the hazards that his health, his family, and his trade were exposed to by his confinement. His Lordship asked them, why they had not petitioned the King and Council; and told them, if Mr. *Yewin* thought it better to lie in prison and complain, than prison and be killed, he might do as he pleased.

They told him they had petitioned him in Mr. Secretary *William*'s name, who promised them to move the King in Council in it. But when they remitted him of it upon the next Council-day, he was pleased to excuse himself. His Lordship told him, he never heard they had tendered bail; but the Writ of *M Habeas Corpus* was forgotten in all his answer.

They then told him, that the general report was, that the King and Council had referred it to his Lordship; but his Lordship would take no notice of that likewise, but said, the King would advise with the Judges when they came to Town. His Lordship withdrew from them; and they left word with his Secretary, That Mr. *Yewin* looked upon himself to be his Lordship's Prisoner.

On the — of August, Mr. *Yewin*'s friends went again to his Lord Chancellor's, but his Secretary told him, his Lordship could not be spoke with. They prevailed with his Secretary to go up to him, and remind his Lordship of his late answer of advising with the Judges; and tell him, that several of the Judges had been in Town, and they did now desire his Lordship's Resolution.

The Secretary at his return told them, that as soon as he began to mention the business, his Lordship fell into a fit of the Stomach; but when that was over, he would mention it to him. About two hours after, they returned; and the Secretary being absent, another of his Lordship's servants came to them, and told them that his Lordship was not well, and could not be spoke with; but had ordered him to tell them, that Mr. *Yewin* might advise with his Council what was fit to be done, for he was none of his Council; and if he would petition the King and Council, he might; and that That was his answer.

On the 11th of August, being the last Council-day that was to be before the 3d of October, Mr. *Yewin* thought fit again to tender bail to the Council; and thus the Lord Chancellor, who discovered all knowledge of his doing so before, and that the whole Council might know of it, he sent this Letter by his bail to the Lord Privy-Seal, then President of the Council, which was publicly read.

"My Lord,

I Have been importuned since the 28th of June, to my great loss, charge, and prejudice of my health. I have hitherto been denied bail, *Habeas Corpus*, and the Writ of *M Habeas Corpus*, which I am informed, were never before denied to any of his Majesty's subjects in the like case: And this only for moving in a lawful Court, and in a quiet and peaceable manner, that which I did believe to be fit for his Majesty's Service, and the good of the City and Kingdom, and the prefer-

vation of the Protestant Religion; and which I conceive I can make appear to be according to the Laws and Statutes of this Realm, if I am publicly called thereon. Wherefore I do not beg a discharge, for I desire nothing more than to clear my Innocence by a public trial; but since Mr. *Yewin* and others, committed to this put it for matter of a far other nature, are duly bound out, my humble request to your Lordship is, that you would be pleased to move his Majesty, that I, as well as any other of his Majesty's subjects, may enjoy the benefit of the Laws; and that the Writ of *M Habeas Corpus* may be granted to me, or that my bail, which now attend, may be taken: Your Lordship will very much oblige

"Your Lordship's humble Servant,

"FRANCIS JERVIS"

This Letter was by some imposed into a Petition; and when they had given it that name, (tho' that was the only thing wanting to please the Lord Chancellor) yet it could not procure the discharge of bail, but the method proposed by his Lordship, proved as ineffectual as those that were demanded of him. The Lord Chancellor's Resolutions being sufficiently discovered, Mr. *Yewin*'s friends sought all further solicitations of his Lordship, and made full application to the Lord Chief-Justice *Reynolds*, on August 18th, then just returned from the Circuit.

The time of Sessions at the Old-Bailiwick drawing on, they caused two Writs of *Habeas Corpus* to be made (the common cause of removing prisoners from one Court to another); one, of *disobedience*, directed to the Keeper at the Gate-house; and the other, of *proposuere*, directed to the Sheriff of London, and desired his Lordship to sign them, that Mr. *Yewin* might be removed and brought to trial; for that the Keeper of the Gate-house not calculating any State-Prisoners, (as he called him) at the Sessions for *Witchamver*, he might be there all his life-time without trial, which no subject ought to do. His Lordship excused himself upon his late return to Town, which had not yet afforded him leisure to advise; and sent them to the Attorney-General, to know whether he were ready for a trial, before he would give them any answer.

Mr. Attorney, upon their coming to him, very worthily told them, That he had no order in it, but that he would not oppose the granting of those Writs: adding, God forbid that what the Law should have its due course. They returned to the Lord Chief-Justice with this answer, and offered to make oath that it was Mr. Attorney's answer; but he would give credit to nothing, but a note under Mr. Attorney's own hand. They told him, it was hard that a man should lie in prison, who was willing to bring himself upon trial; that Writs of this nature were every day granted, and did procure, could not reasonably be denied. His Lordship answered, he would know whether Mr. Attorney were ready for a trial. They replied, That they did not know when Mr. Attorney would be ready, and Mr. *Yewin* must stay for his Trial till then.

They then went his Lordship, as they had done formerly, That he would grant a *Habeas Corpus* to bring him before his Lordship, and that he would accept of substantial Sureties for bail, who should render him whenever Mr. Attorney should call for him; alledging, that such Writs had been frequently granted by the Lord Chief-Justice *Kent*, and one of the now Judges of the King's Bench.

His Lordship returned, that he did not doubt the security they should offer him; but he had never granted such a Writ, and he knew not upon what authority others had done it: And in short, refused to grant either that or the other Writ.

After all these denials of right, Mr. *Yewin* resolved to sit still, with the satisfaction, that his ill success was not imputable to the injustice of his cause; but to the pleasure or fear of those that had the power of making it otherwise: And with patience to expect it till the Term should see open the prison-doors, which will not break the denial of a *Habeas Corpus*, tho' a long Vacation may.

No further advice was therefore made to either of their Lordships; but themselves, after they had taken the pleasure of deparing him, were pleased to confederate to intercede for him: for as we heard, by very credible information, the Lord Chief-Justice went to the Lord Chancellor and told him, "That the Writs demanded of him, were according to Law, and could not be denied; and that he had only taken time till he had acquainted his Lordship with it."

The Lord Chancellor directed him to the Lord Treasurer for further advice; who sent him to the King. As soon as his Majesty understood, that what was demanded was the subject's right, he immediately commanded that the laws should have their due course, which their Lordships had stopped: And accordingly he was bailed.

[He was afterwards, in 1683, tried with *Thomas Pilkington*, *Henry Cresswell*, *Edgar*, and others, for a Riot at *Goldsmiths*, and fined 500 marks. See *State-Trials*, Vol. III. p. 541.

XXXIII. Articles of High Misdemeanours, humbly offered and presented to the Consideration of his most Sacred Majesty, and his most Honourable Privy-Council, against Sir WILLIAM SCROGGS, Lord Chief-Justice of the King's-Bench; exhibited by Dr. Oates, and Captain Bedlow, 31 Car. II.

THAT the said Lord Chief-Justice, contrary to his oath, the duty of his place, in sentiment of the King, his Crown and Dignity, did sit at liberty several persons accused upon oath before him of High-Treason, without their being ever tried, or otherwise acquitted; as namely, the Lord *Broderick*, &c.

II. That at the Trial of *the Gorge Wileman* and others at the

Sessions-House in the Old-Bailiwick for High-Treason, the said Lord Chief-Justice (according to the Dignity of his place) managing the said Trial, did know-hear and curb Dr. *Timothy Owen* and Mr. *William Bedlow*, two of the principal Witnesses for the King in that case; and encourage the Jury (imposed and sworn to try the malefactors, against the said witnesses, by his publicly speaking highly

and

could not be Mr. Langham write in his study: which was Mr. Biddle's evidence.

XIII. He faith, the matter complained of is a more contrait with other men, of which he thinks himself not bound to give Mr. Gales and Mr. Biddle any other account, but that by the taking of twelve guineas he lost forty; and that his backwardness to go into the Court at Walsden's Trial, makes it look as if he had not had ten thousand pounds to favour Walsden in his Trial.

If these Articles shall appear to your Majesty to be frivolous, or scandalous, or

not true, I humbly pray — that your Majesty's pleasure therein, in relation to your Courts and Government.

And that such an evidence attempt may not go unpunished: that the new statute may be left to be proceeded against according to Law.

The Articles of Mr. John Gales, and Mr. William Biddle, against the Lord Chief-Justice Scroggs, were heard that 21st of January, 1679, before the King and Council; and upon the hearing of both sides, Mr. Gales and Captain Biddle are left to be proceeded against according to Law.

But I don't find the Chief-Justice recover'd any damages.

XXXIV. Proceedings against Sir WILLIAM SCROGGS, Knt. Lord Chief-Justice of the King's Bench, and other Judges, in Parliament, 1680. 32 Car. II.

Novem. 13, 1680.

Several Persons were examined in the House of Commons about the defaming of a Grand-Jury in Middlesex. After which, several Members of the House spoke as follows, viz.

Sir William Jones.

MR. Speaker, Sir, the prebendation of the Government in general, as well as our particular fidelity, have a dependance upon the matter that is now before you, in which there are so many misapprehensions to be cleared, so there is such some difficulty how to examine them. I cannot but observe, how the Proclamation is here again mentioned; by which you may conclude, there is such a great weight upon the people's right to petition by means thereof, and that the bill way to remove it, is to find out the authors and contrivers of that Proclamation, in order to proceed against them according to their deserts. Without which, what you have done in asserting the Right of Petitioning, will remain with some doubt; and that which did assist the proclaiming to the people, that it is sedition to petition the King, without that challenge they deserve. And therefore, I humbly conceive, you will do well to consider of it as soon as you can. It is not strange, that the Proclamation should be made use of with Country Gentlemen, to get adherents to petitioning, because the Judges themselves have made use of it to that purpose. They should have known, that though a Proclamation might be of great use, it is likewise the destruction of a Law, yet that it had never been used against a Law. But yet I do not admire so much at this as I do at the discharge of the Grand Jury, before they had finished their prebendations. It tends so much to the subversion of the established Laws of this Land, that I dare pronounce, that all the Laws you have already, and all that you are to make, will finally nothing against any great man, unless you can remedy it for the future. I observe, there were two real reasons why this Grand-Jury were so extravagantly discharged, one, because they would otherwise have protested the Duke of York for a Popish oath; the other, because they pretended a Petition to be delivered to the King for the raising of the Parliament, which they said it was not their business to deliver. Though I cannot but observe, how upon other occasions they did receive Petitions, and deliver them to the King, and all the difference was, that the Petition was delivered to a special Justice of Parliament. The truth is, I cannot much condemn them for it; but if they were guilty of such crimes as the witnesses have this day given you information of, I think they had no reason to farther Petition for the raising of a Parliament. But, Sir, this business will need a further Information, and therefore, I humbly pray it may be referred to a Committee.

Sir Francis Wrentham.

MR. Speaker, Sir, I think we are come to the old times again, when the Judges pretended they had a rule of Government, as well as a rule of Law; and they have acted accordingly. If they did never read *Magna Charta*, I think they are not fit to be Judges; if they have read *Magna Charta*, and do thus to contrary, they deserve a severe rebuke. And I discharge Grand-Juries of purpose to disappoint them of making their prebendations, is to deprive the Subject of the greatest benefit and security the Law hath provided for them. If the Judges, instead of ruling by Law, shall be acted by their ambition, and endeavour to get promotions rather by subverting the right Law, than by doing Justice, the Nation will soon be reduced to a miserable condition. Suppose that after the discharge of this Grand-Jury, some Person had offered to present some Member, Traitor, or other capital crime, for want of the Grand-Jury, there would have been a failure of Justice. As faults committed by Judges are of more dangerous consequence than others to the Public, for they do not wait precedents to prevent themselves for them than for others. I humbly move you first to pass a Vote upon this business of discharging Grand-Juries, and then to appoint a Committee to examine the misdeeds of the Judges in Walsden's case, and to report the same with all speed to you.

Mr. R. Tice.

MR. Speaker, Sir, As it hath been observed that this business has some reference to the Proclamation, I believe there is something of the plot in it too; and therefore, I think if the Plot did not go on, it would have been worse than that our Plot did, being the Judges, as well as most other persons in public places, have given it as much assistance as they could. But whereas, as some have spoken ill of these Judges, I dare to speak well of them in one thing, I am confident they have been as honest themselves as any of their benefactors; for I do believe that even as there were prefer'd to these places of purpose, because they should do what they have done. Laws of themselves are but dead letters: unless you can give the execution as well of these you have already, as of these you are now making, we shall spend

our time to little purpose. Therefore I second the motion that hath been made for a Vote, to declare the rule of the House as to the discharging of Grand-Juries, and for entering the further examination to a Committee.

Mr. W. Biddell.

MR. Speaker, Sir, the business of this debate is a great increase of our sick and languishing condition. As our Ships, Forts, and Gallies are for securing us from the danger of our enemies from abroad, so our Laws from our enemies at home; and if committed to such persons as will turn their strength upon us, are equally dangerous. Sir, We all know how the Government of Scotland hath been quite altered since Mr. Jeff's Rebellion, by James Lawrie made there a prey to us: born a free man, yet so altered by the corrupt proceedings of Judges, yet so reduced to a state most odious of depending upon the arbitrary Power and arbitrary Government: here, that they are slow. It judges can thus prevent the penalties of the Law, by discharging my Grand-Juries before they have made their prebendations, and can make laws by their Rules of Court, I think the Government may soon be subverted; and therefore, that it is high time for the House to speak to these Gentlemen. In former times several Judges have been impeached, and hanged too, for their crimes since that; and the reason was, because they had broke the King's oath as well as their own. It is what hath been a trial of these Judges be fully proved, they shall not say that the Vote is of little use to them in the same impeachment. The truth is, Sir, I know not how the ill consequences we justly fear from Judges can be prevented, so long as they are made servants to popular, and have such dependance as they have. But that must be a work of time: in order to remedy our present miseries, let us pass a Vote upon this business of discharging Grand-Juries, and that it may be sent to the safe custody. If you please, let a Committee be appointed to examine the misdeeds of the Judges.

Mr. H. Poul.

MR. Speaker, Sir, I would beg leave to observe to you, because I think it may not be necessary to be considered by your Committee, what an opinion was given not long since by some of our Judges about Praying; which was, that Prayers of New might be prohibited by Law; and accordingly a Proclamation issued out. I will not take on me to confirm the opinion so illegal, but leave it to your further consideration. But I remember there was a complaint held by the Judges a little before, and they gave their opinion, that they were not of any way to prevent Praying by Law, because the Act for that purpose was expired. Upon which, some Judges were put out, and new ones put in, and then they gave their opinion. These things are worthy of a serious examination; for if Traitors may raise money by flouting at the Statute, borrowing of the Bankers, or re-employment, and the Judges make new Laws by an ill construction, or an ill execution of the old ones; I conclude, that Parliament will soon be found useless, and the liberty of the people an inconvenience as to the Government. And therefore, I think, Sir, you have been well moved to endeavour to pass your motion on some of these illegal proceedings by a Vote, and to refer the further consideration to a Committee.

Sir Francis Wrentham.

MR. Speaker, In the front of *Magna Charta* it is said, *Nemo nos compellat, nisi defensores Justitiam*, we will defend to every Justice to no man: to this the King is sworn, and with this the Judges are entrusted by their Oaths. I assure what they can say for themselves, if they have not said this Law, they are not fit to sit upon the Bench; and if they have, I had almost said, they deserve to lose their heads.

MR. Speaker, The state of this poor Nation is to be deplored, that in the midst all this, the Judges, who ought to be protectors of the Laws, have attempted to destroy them; and that to please a Court-faction, they have by treachery attempted to break the bonds of Liberty of *Magna Charta*, the great treasure of our people. It was no doubt said, but a Chief-Justice (*Robert de Berey*) in that day, persuaded the King he was not bound by it, because he was under age, when it was said. But this sort of violence the next Parliament referred, to the ruin of the pernicious Chief-Justice. In the time of Richard II. an unthinking, dissolute Prince, there were Judges that did violence unto the King, that the Parliament were only his creatures, and treated as his will, and not as the fundamental constitutions of the Land; which treacherous advice proved the ruin of the King; and for which all these evil Interests were brought in Justice. In his late Majesty's time, his misdeeds were occasioned chiefly by the corruptions of the Lord Robt; his Judges by an extraordinary opinion gave the King power to raise money upon an extraordinary occasion without Parliament, and made the King Judge of such occasions: Charity prompts me to think they thought this a service to the King, but the sad consequences of it may convince all mankind, that

that every illegal act weakens the Royal Interest; and to endeavour to introduce absolute Disunion in their Estates, is the worst of Treasons. It casts a stain on the face of friendship to the King, and designs to be his ruin; whereas, it ever has, and of the contrary effect.

It is the two main pillars of the Government, are Parliament and Justice. It is this power to the rule of *ancient Bosphorus*. For my nation of *England* is this, as it is governed by Laws of their own making, and their own of the Law, combined with themselves. The two great and restricted privileges of the people, have been lately abused by the Judges that now sit in *Windsor*, and they have abused. Proclamation against Laws, they have discontinued and opposed several legal Acts, that tended to the lifting of this venerable House; they have galled the legislative Power into the same basis, as in that instance of Printing, the Parliament was considering that matter, but they, in the interim, made their private opinion to be law, to beset the parliament of this House: They have discharged Great Juries, on purpose to quell their processness, and flatter great Criminals from Justice, and when Juries have protested their opinion for the lifting of this Parliament, they have in disdain thrust them at their feet, and told them they would be no suffragers to such a rich Parliament; and yet, in a few days all will be concluded all that would give the crown against the Government, they have taken the great and arbitrary power, and sent the messengers of submission to the crown.

[illegible]

Then the House agreed to the following Resolutions.

Resolved, That the charging of a Grand Jury by any Judge, before the end of the Term, Adjourn, or Recess, while matters are under their consideration, and a postponement, is arbitrary, illegal, defective to public justice, a violation of the rights of the Jury, and is a cause to forbear the punishment of any of the Jurors.

Resolved, That a Committee be appointed to examine the Proceedings of the Judges in Westminster-Hall, and report the same, with their opinions thereon to the House.

Whereupon a Committee was appointed, and they for several days, and then made the following Report :

The Report of the Committee of the House of Commons, appointed to examine the Proceedings of the Judges, &c. *Therein*, Dec. 23, 1680*.

THIS Committee being informed, that as Trinity-Term last, the Court of King's Bench had given the Grand Jury, that served for the hundred of Middlesex, a bill against the said John, and that the said Master, Peter's, Clerk, had taken the same, and laid by the information of *Charles Daffinshield*, Esq. Foreman of the said Jury, *Edward Peck*, Henry Gerard, and *John Smith*, Gentlemen, all of the said Jury, That on the 21st of *June* last, the said bill attending the said Jury were found defective, as not presenting the *facts* as they ought, and therefore were adjourned by the said Jury to make further presentations of them on the 25th following, on which day the Jury met for that purpose; when several Peers of the said Bench, and other persons of honour and quality, brought them a bill against *James, Duke of York*, for not coming to Court; but some new reports being taken to flow bill, so that it did not appear that the said Duke in a Paper, signed of the Jury, attended the said process of quelling the *revenue* of the said Duke. In the mean time, about an hour after they had received the said bill, some of the Jury attended the Court of King's Bench with a Petition, which they desired the Court to present in their name unto His Majesty for the setting of the Parliament. Upon which, the Lord-Chief-Justice *Sergeant* raised many scruples, and on pretence that they were not all in Court (that twenty of the Jury had subscribed the Petition), sent for them, saying, He would discontinue them presently. The Jury being angry, and their names called out, they renewed their desire that the Court would present this Petition; but the Chief-Justice asked, if they had any bills? They answered, that they had, but the Clerks were drawing them into Court. Upon which, the Lord-Chief-Justice said, that he would not receive any bills of the said Duke and the Petition being read, he said that was no article of their petition; and was there any Act of Parliament that required the Court to deliver the Grand Jury's Petition. That there was a Proclamation about them; and that it was not reasonable the Court should be obliged to run on their errands; and he thought it much, that they should come with a Petition to alter the King's message declared on the New-Books. The Jury said, they did it not to impose on the Court, but (as other *James had done*) with all submission they desired it, but the Court refused, telling the Court even then their Petition. And Mr. Justice *Yates* told them, they had needed no motion of *Seize*, nor again their errands, but presented no bills of the said Duke, as in that case. They desired it because they were not all in Court, and that they were not all in Court. Notwithstanding which, the said Jury desired to deliver their names, and were charged from day to day service. But *Philip Wood*, the Clerk, that attended the said Jury, read out, No, no, they have no bills before them, for which the Court adjourned (as it is said to be) to *Guarantee*; a secret story, which the Clerk did not, reproved him, saying, if the Clerk were

10 p. - the rule there? The Court then told the Court, they would not receive their Pension. The Chief Justice had him let it go, so it was I there, and the jury consisted of 12 men, and there found several reasons why it was not a Grand Jury, and one of them, as the Judge had directed, was the first being, that could not now receive the defendants, being discharged, whereby such business could be transacted, that none of the 12 Informants were known to the Grand Jury, and that the 12th day of the Term, which was not till Sunday, and I and further agreement to the Constitution, by the evidence of Samuel A. Taylor, John Lusk, and Philip Ward, Clerks, that have long served in the Court, that they were much surprised at the first discharging of the Jury, so that it was not over in their ordinary way, and the rather, because the said Hefring, as Secretary, and only one or so on that Grand Jury paper, that the 12th day of the Term is given them to return the 12th day, as the 12th day, but one is given to the other two Grand Jurors of that County, which was in as full view.

Tying to Car. 11

<i>Forstersia</i> habent d. em. et veriditatem p. em. reddendum usq. d. em.	Malley.
<i>Morone</i> p. em. et d. em. et d. em. et d. em. et d. em. et d. em. et d. em.	Malley.
	Malley.

Being the last day of the Term, and of all the other Term the Life day is given, which is seen to appear to this Committee, that they were not in truth deluged with not having their proceedings ready, but the Court had on it more a longer day, but why is obstruct this further proceedings, and it appears by the evidence offered to this Court.

For, after the failure of that Court we spoke of at the beginning of the last July, and it did not appear that any of them did differ the slightest upon the point whereof the Commerce came to this sad decision.

And that is the opinion of this Committee, that the only way to the Grand Jury of the hundred of *Offshore*, in the County of *Wiltshire*, by the Court of *Exchequer*, in *Trinity Term* last, before the *Lord* of the *Treasury*, and before they had finished their deliberations, was *not* to *admit*, and a *high* *misdemeanor*.

The Court, and a *per se* attempt to require into a rule of the Court of King's Bench, is given in support of the publishing of a Book, called *The Fifth Part of the Decisions from Rome; or, The History of Piracy*, and *Sawney's Story*. Gent, counsel for the defendant, informed the Court, that the Author of the first Book, *Henry Court*, had been informed of all the facts, and had provided to the Information; but before it was not a rule made on a motion, as he supposed, against the said Book, and the Judges of that Court (as he remembers) being present, and one difference. The copy of which rule he gave us to this Court, and is as follows:

Die Morarij praeiit post tres Septimanas Janua Trivialis. Aves 32.
Cat. H. Roris

Ordinances of public libraries. The Weekly Packet of Advice from *Ramsay, or, The History of Popery*, now almost everywhere sold publicly for a few pence. *Perforated quinquaginta.* Per Car.

And this Committee, admitting that Profranchise Judges should take offence against a Book, whose chief design was to expose the cheats and forgery of Poetry, enquired further into it, and was found by the evidence of *Jos. Garcia*, that the said Book had been licensed for several months, that his husband paid for the copy, and entered it in the Hall-book of the Company. But for all this, the could not prevail by these reasons, with the

Lord Chief Justice Swaine, to permit it any longer; who said, 'Ye are a foolish London Livel, and against the King's Proclamation; and he would soon see if ever she got the primed it any more.' And soon after the was furnished with the fee, as the Author, and other Promoters were; and by the Author's evidence it appears, that he was taken and brought before the said Chief Justice by his warrant above a year since, and upon his coming he was put out of that Book, the Chief Justice called him rogue and other ill names, saying, he would fill all the gaols in England with such rogues, and pile them up as mountains; and he commenced him a prisoner, refusing to give him bail, and taking a great goal him, as possible; and he was kept in the said gaol, till he was paid a great sum of money, for his Liberty; which he was paid, and he was put out of prison, to come him to his Arrest Corps, and then taking the same had him confined before a Bench, which the Committee came in to this resolution.

Replied, That it is the opinion of the Committee, that the sale made by the Count of King's Bench, in Trinity Term last, against printing a Book, called, *The Weekly Pocket of Affairs from Rome*, is illegal and arbitrary.

And the Committee proceeded farther, and upon information that a very small latitude had been taken of late by the Judges, in shipping fares on the persons seized guilty before them, caused a transmittal of all the fines imposed by the *King v. Arabi* since *Esfor* Term, in the fifth of his Majesty's Reign, to be brought before them, from the Old Court, by *Sheriff* Esfor, Gent. By perusal of which, it appeared to this Committee, that the quality of the offence, and the ability of the person seized guilty, have not been the only factors that have determined the quantum of the fine, which brings in a very narrow case, and the Committee refer themselves to those Records as to the general, influencing circumstances, and state the following particulars as follow :

Upon Joseph Brown, of London, Gent. on an Information
for publishing a printed Book, called *The Long Persecution of* Trinit. 28.
Cao. 21.

place, in which I feel forth these words. We let any more exist in slavery, nor yet assist it through for you to fit and act contrary to our Law; so that in the first Parliament of Richard II. Groins and Wodson, for being guilty of a felony, were adjudged guilty of High-Treason for having done the place committed to their trust, how much more you, if you turn Renegades to the people that corrupted you, and as much as in you to pervert our a little piece of Cotte or two, but all the legal force the people of England have for themselves, liberties and properties as well? Neither let the same perfidious doctrine pass, that we should not be found, that our English Parliament could give us another, though peradventure even that may be proved a mischief. For an unqualified crime calls for an unqualified punishment; and if you shall be so inclined to do the one, or rather contrived to do, (for none you are so long or so Parliament) without ground of confidence you can have that none may be found to surely do the other, you cannot understand and do faithfully.

* This Report is printed in *State Trials*, Vol. III, pp. 293, but without the Impeachment and Answer of the Lord Chief Justice Swettenham, or the Debates in Parliament so that to make the Proceedings complete, we have printed the former parts, that Gentlemen may see the whole at one view.

to apprehend them, and have them before one of his Majesty's Justices of the Peace, to be proceeded against according to Law. Dated this 29th day of November, 1679.

To Robert Stephens, Messenger of the Peace, and to all Messors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom they may concern.

W. SCROGGS.

Angel B. WHEREAS the King's Majesty hath lately issued out his Proclamations for suppressing the Printing and Publishing unlicensed News-Books, and Pamphlets of News, News-handling which, there are divers persons who do daily print and publish such unlicensed Books and Pamphlets.

That there are to wit, and require you, and in his Majesty's Name to charge and command you, and every of you, from time to time, and at all times, to often as you shall be thereto required, to be aiding and assisting to Robert Stephens, Messenger of the Peace, in the seizing of all such Books and Pamphlets as aforesaid, as he shall be informed of, in any Bookeller's Shop, or Printer's Shop or Warehouse, or elsewhere whatsoever, to the end they may be disposed of as to Law shall appear. Likewise, if you shall be informed of the Authors, Printers or Publishers of such Books or Pamphlets, you are to apprehend them, and have them before one of his Majesty's Justices of the Peace, to be proceeded against as to Law shall appear. Dated this 28th day of May, 1680. 1680.

To all Messors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom they may concern.

To Robert Stephens, Messenger of the Peace.

W. SCROGGS.

Upon view whereof this Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, that the said Warrants are arbitrary and illegal.

And this Committee being informed of certain scandalous discourses, said to be uttered in public places by the Lord Chief Justice Scroggs, proceeded to examine Sir Robert Adams, late one of the Justices of the Common-Pleas, concerning the same, by whom it appears, That at a Sessions-dinner at the Old-Bailey, in the Majority of Sir Robert Adams, who was then present, the said Chief Justice took occasion to speak very much against Parliament, condemning it as retarding, as tedious and tending to Rebellions, or to that effect, to which the said Sir Robert Adams made no reply, supposing he wanted for some advantage or other. But the Chief Justice continuing and pressing him with the said discourses he began to justify himself as the right of the people, especially for the fitting of a Parliament, which the Law requires, if it be done with modesty and respect. Upon which the Chief Justice fell into a great passion, and there is little reason to believe, that soon after he made an ill representation of what the said Sir Robert Adams spoke, unto his Majesty. And this Committee was further informed, that the said Sir Robert Adams being in circuit with the said Chief Justice, at Summer Assizes was twelve-month, at Macclesfield, (Mr. Adams, Mr. Price, and Mr. Bull being then in company) the Chief Justice fell verbally, in public, upon Mr. Adams, taking off the credit of his evidence, and alleging he had over-did himself in it, or to that effect, very much to the disparagement of his testimony. And the said Sir Robert Adams, Mr. Adams, in evidence and credit, he grew extremely angry and loud, saying to that effect, That he would never Langdon did accompany. To which Sir Robert replied, He wondered how he could think that who had committed him himself, and had not moved the King for a remission for him. All which matters of discourse, this Committee humbly submit to the wisdom and consideration of this House, without taking upon them to give any opinion therein.

And this Committee proceeded further to inquire into some passages that happened at Law Adverses left for the County of Somerset at the trial of Thomas Dore, Great, there, upon an Indictment for saying falsely and seditionously, That the Subjects had no power to resist their governors, as by testimony, the other by relation: and found, that though by his other discourses, when he said by, that it appeared plainly he had no rebellious intention in that he said, That God forbid there should be a rebellion, he would be the first man to be the sword against a Rebel, yet he was proceeded with great violence. And having pleaded, Not guilty, he moved Mr. Justice Jones, (who then sat Judge there) that he might try it at the next Assizes, L. that Mr. Serjeant [who was by] in the speaking of the words, and a material witness for his defence) was not then to be had, and an affidavit to that purpose was made and received, but the said Justice Jones told him, That was a favour of the Court rules, and he had not delivered any favour, and he forced him to try it presently. But the Jury, appearing to be an extraordinary one, provided on purpose, being all of persons that had highly opposed themselves for the fitting of this Parliament, he was advised to withdraw his plea, and the said Justice Jones, concerning him to do so, he denied the words, denying any evil intention, and gave the said Justice an account in writing, of the truth of the whole matter, and made a submission in Court, in which he was directed by the said Justice, who promised to recommend him to his Majesty, but imposed a fine of 5000. on him, and to be bound to good behaviour for three years: Declaring also, That he was turned out from being a Common-Councillor of the Corporation of Taunton, in the said County, on pretence of a clause in their Charter, giving such a power to a Judge of Assize. And the said Thomas Dore remains yet in prison for the said Fine, in which manner of the Trial aforesaid, this Committee doth intend to refer itself to the judgment of this House.

The Rebellions of the House of Commons upon the said Report.

1. That it is the Opinion of this House, that the discharging of the Grand Jury of the hundred of Offlow, in the County of Middlesex, by the Court of King's Bench, in Trinity Term last, before the last day of the Term, and before they had finished their proceedings, was arbitrary and illegal, destructive to public Justice, a manifest violation of the Oaths of the Judges of that Court, and a means to subvert the fundamental Laws of this Kingdom, and to introduce Popery.

2. That it is the Opinion of this House, that the rule made by the Court of King's Bench, in Trinity Term last, against printing of a Book, called, *The Weekly Packet of Advice from Rome*, is illegal and arbitrary, thereby usurping to themselves legislative power, to the great disadvantage of the Protestants, and for the countervailing of the Popery.

3. That it is the Opinion of this House, that the Court of King's Bench, in the imposition of fines on offenders of late years, have acted arbitrarily, illegally and partially, favouring Papists, and perverting public justice, and executing opposing his Majesty's Protestant Subjects.

4. That it is the Opinion of this House, that the refusing sufficient Bail in these Cases, wherein the persons concerned were detained by law, was illegal, and a high breach of the Liberties of the Subject.

5. That it is the Opinion of this House, that the said expressions in the charge given by the said Baron B. Jones, were a scandalous Reflection, and tending to cause discord in the said Majesty's Subjects, and to the subversion of the ancient constitution of Parliament, and of the Government of this Kingdom.

6. That it is the Opinion of this House, that the said Warrants are arbitrary and illegal.

The Petitioners of the Commons, for the Impachment of the said July 4.

Resolved, That Sir William S. Serjeant, Knt. Chief Justice of the Court of King's Bench, be impeached upon the said Report, and the Resolutions of the House thereupon.

Resolved, That Sir Thomas Jones, one of the Justices of the said Court of King's Bench, be impeached upon the said Report, and Resolutions of the House thereupon.

Resolved, That Sir Richard Wilson, one of the Barons of the Court of Exchequer, be impeached upon the said Report, and Resolutions of the House thereupon.

Ordered, That the Committee appointed to prepare an impeachment against Sir Francis North, Chief Justice of the Court of Common-Pleas, do prepare impeachments against the said Sir William Scroggs, Sir Thomas Jones, and Sir Richard Wilson, upon the said Report and Resolutions.

Ordered, That the said Report, and several Resolutions of this House thereupon, be printed; and that Mr. Speaker take care in the printing thereof a-part from this day's other Votes.

January 5. 1681. The Articles against Sir William Scroggs, Chief Justice of the King's Bench, were read as follow.

Articles of Impeachment of High-Treason, and other great Crimes and Misdemeanours, against Sir William Scroggs, Chief Justice of the Court of King's Bench, by the Commons in Parliament assembled, in their own Name, and in the Name of all the Commons of England.

THAT he the said Sir William Scroggs, then being Chief Justice of the Court of King's Bench, hath traitorously and wickedly endeavoured to subvert the fundamental Laws, and the established Religion and Government of this Kingdom of England, and uttered thereof, to introduce Popery and an arbitrary and tyrannical Government, against Law, which he has declared by divers traitorous and wicked Words, Opinions, Judgments, Practices and Actions.

2. That the said Sir William Scroggs, in Trinity Term last, being then Chief Justice of the said Court, and having taken an oath duly to administer Justice, according to the Laws and Statutes of this Realm, in pursuance of his said oath, purposed did, together with a cleft of the said Justice of the same Court, several days before the end of the said Term, in an arbitrary manner discharge the Grand Jury, which then served for the Hundred of Offlow, in the County of Middlesex, before they had made their Proceedings, or had found several Bills of Indictment which were then before them; whereas the said Sir William Scroggs was then fully informed: and that the time would be tendered to the Court upon the last day of the said Term; which day then was, and by the known count of the said Court both always heretofore been given unto the said Jury for the delivering in of their Bills and Preferences: By which false and illegal discharge of the said Jury, the course of Justice was stopped unlawfully and illegally, the Proceedings of many Persons and other offenders were obstructed, and in particular, a Bill of Indictment against James Duke of York, for abetting himself from Church, which was then before them, was prevented from being proceeded upon.

3. That whereas one Henry Gorr had, for some time before, published every week a certain Book, intitled, *The Weekly Packet of Advice from Rome*, or, *The History of Popery*, wherein the superstitious and abusive of the Church of Rome were from time to time exposed, L. the said Sir William Scroggs, then Chief Justice of the Court of King's Bench, together with the other Judges of the said Court, before an illegal conviction of the said Gorr of any crime, did at the same Trinity Term, in a most illegal and arbitrary manner, make, and cause to be entered, a certain rule of that Court, against the printing of the said Book, in these Words:

Die Mercurii proximo post festum Septembris Sancta Trinitatis, Anno 2a Car. II. Regis.

Ordonation of good Lord Intendant: The Weekly Packet of Advice from Rome, or, The History of Popery, was otherwise imprimer and published for aliquam personam quocumque.

Per Cur'

And did cause the said Gorr, and divers Printers and other persons to be served with the same, which said Rule and other Proceedings were most apparently contrary to all Justice, in condemning not only what had been written without hearing the Parties, but also at that night for the future be written on that subject, a manifest countervailing of the Liberty and countervailing of Protestants, an open invasion upon the right of the Subject, and an encroaching and assuming to themselves a legislative power and authority.

4. That the said Sir William Scroggs, since he was made Chief Justice of the Court of King's Bench, hath, together with the other Judges of the said Court, most notoriously departed from all rules of justice and equality, in the imposition

the public being more concerned in their actions; and therefore the custom of Parliaments hath made that treason in them, which is not so in other persons. The words of Judges and Privy-Councillors, in some cases, are *Quæritur* of themselves, I think it will become the wisdom of the Nation, to make all the defence and provision they can, against the corrupt designs of Men in such places: And I do not see what danger can arise to our posterity by such proceedings. Is it not with the Parliament we entrust this power? Who can imagine that a Parliament can ever be so corrupted, as not to be carefully concerned in their proceedings as to life and death, and only to contrive themselves therein, when some extraordinary exigencies in which the Government is much concerned, requires it? What Man would desire to live after he was thought worthy of death by such an assembly? And notwithstanding what hath been said to extenuate the crimes mentioned in the Articles, I think, the *Order* that was made in the *King's Bench about Printing*, by the Judges, was *making as them a legislative Power*, which hath formerly been judged treason: And I think we live now in as dangerous times as ever, and stand as great a necessity to have a care of the mischief that may happen to the Nation by ill Judges, as ever. And I see no reason to doubt our being able to make good these Articles, and therefore I say that the Articles may be engrossed as they are.

Mr. Pym.

Mr. Speaker, Sir, I agree that it will become this House very well, to be very cautious how they make precedents in cases of treason, which are the *Stems* of life and death: as also how they make parliamentary proceedings, that are necessary to preserve the Government. And I hope that nothing but the true merits of the cause will lead us in a matter of so great importance, and neither will any orators, nor my forced explanation of the laws. I see it agreed by all, that Parliaments have a power of declaring treason. The question is, whether the most sufficient and securest, to have it done by Bill, that the King, Lords and Commons may join therein: or whether by an impeachment from the Commons, the Lords being only the Judges: or whether any thought ought or can be declared treason by Parliament, which was not felony by some known law before?

Sir, I am of opinion that it is safest and most agreeable to the policy of this Government, that the declaring of any thing treason in Parliament should be by Bill, that King, Lords and Commons may join therein, that so such a precious thing as the life of the subject should have the greatest security imaginable. However, it is not to be doubted, but it hath been practised otherwise, and that many persons have been condemned in Parliament upon impeachment from the Commons, for facts which were not treason by any known Law. And the reason may be, thereby to prevent the danger that might arise from *some Ministers of State* growing so great with the King, as that they should be able to secure him from ever giving his consent to a Bill. In such a case, by giving ill counsel and other secret counsels, (happily as far as treason, yet not known by any law) they would be secure from punishment, if this way of proceeding against such a person, where the King's conscience is not necessary, were not allowed of. And the preserving of this right is so far from being contrary to the wisdom of our Ancestors, that it is very agreeable to all their proceedings in the constitution of this Government, in order to balance it the better, and preserve it against the designs of great ill Men. And as to the other objection, whether the Parliament can declare any thing treason that was not felony before by some known law, I am quite of another opinion, and do believe that the practice hath been otherwise. The Judges in Sir Rich. the 11th's time were condemned for giving extrajudicial opinions, which, I think, was not felony by any Statute-Law. A Knight of *Clare* was condemned in Parliament, for conspiring the death of the King's uncle: an Earl of *Northumberland*, for giving liveries to so many persons as were judged a little army; and many other cases which I have read of, in which persons have been condemned in Parliament, when their crimes were not felony by any known law. But I do not take any delight in ripping-up old Statutes or Precedents about treasons. I am sorry the misfortune of our times should make it now necessary. But if the Parliament, as I conclude, have often declared such things as their treason, and the Commons have impeached persons guilty of such crimes as they are drawn. For notwithstanding what hath been said to mitigate the crimes contained in these Articles, I am of opinion, that the order made in the *King's Bench*, about *Printing*, their *Warrants for printing of Books*, their *dismissing of Grand Jurors*, did tend to the subversion of the Government; and hath been, and ever ought to be, in Judges, judged High-Treason. And therefore, there cannot conflict with the prudence of this House, nor the security of the Nation, that this person should be impeached of less than High-Treason: And therefore I move you, that the Articles may be engrossed.

Mr. Paul Foley.

Mr. Speaker, Sir, we are not going about to declare any thing treason, but to offer our Articles, and leave it to the Lords; therefore most of their arguments would be more proper there: for we only impeach, they are to be the Judges, whether the matter be treason or no. It is true, or ought to be cautious what we do in it, because it is not proper that this House should impeach a man for treason, without having good grounds for it. But is not the *Order about Printing a kind of an Act of State* to serve instead of a Law? Is not the will of Grand-Jurors a very essential part of this Government? And is not the dissolving of them, as

this Judge did, a way to render them useless? Are not his *Warrants to seize Books and Papers arbitrary*? And doth not all tend to the subversion of the Government? and what better grounds should we have for our proceedings? I think the Articles are well drawn, and ought to be engrossed as they are.

Sir Richard Temple.

Mr. Speaker, Sir, I cannot admit that Parliaments, by impeachments before the Lords, can make any thing treason, but only such matters as were treason by common law, before the Statute of *Edward the Third*. And, I think, we ought to be so cautious of our posterity, as not to press for such precedents, left you put into the hands of the Lords a power, for which we may have cause to repent hereafter, but never get back again: For the Lords do not use to part with those Powers they once get. There are precedents by which it appears, that the Lords have attempted to make declarative treasons also, without any impeachment from the Commons. Have a care how you give them encouragement to proceed therein, better keep to the other way of making no declarative treason but by Bill.

The Articles were read, and Question put:

Resolved, That the said Sir William Scroggs be impeached upon the said Articles; and that the said Articles be engrossed, and carried up to the Lords by my Lord Goodrich.

Ordered, That the Committee appointed to examine the proceedings of the Judges in *Windsor*-hall, and to prepare impeachments against Sir Francis North, Chief-Justice of the Common-Pleas; Sir Thomas Jones, one of the Judges of the Court of King's Bench; and Sir Richard Wilmot, one of the Barons of the Court of Exchequer, do bring in such impeachments with all convenient speed.

After the Articles were brought into the House of Lords, the Lord Chief-Justice put in the following Answer; viz.

The Answer of Sir William Scroggs, Knt. Chief-Justice of his Majesty's Court of King's Bench, to the Articles of Impeachment exhibited against him by the Commons of England, in the late Parliament assembled.

"THE said Sir William Scroggs, by, and under protestation, that there is no manner of High-Treason, nor by any *Over-Act* of High-Treason, imputably alleged nor expressed in the said Articles of Impeachment, to which the said Sir William Scroggs, or is bound by Law to make any answer unto; and saving to himself, (and which he prayeth may be saved to him), both now and at all times hereafter, all, and all manner of benefit and advantage of exemption to the insufficiency of the said Articles, in point of Law, as well for that there is no overt-act of treason expressed therein, as for all other the defects therein appearing; for the Plea thereof be faith, That he is in no wise guilty of all or any the crimes, offences, or misdemeanours, of what nature, kind, or quality soever, by the said Articles of Impeachment charged upon him, in manner and form, as in and by the said Articles is expressed; which he is ready to aver and prove, as this honorable House shall award; and humbly beseecheth himself, and the justice of his cause, to this most honorable House: and prayeth to be discharged of the premises, and to be hence defended and acquitted of all the matters, crimes, misdemeanours, and offences, in and by the said Articles of Impeachment charged upon him, &c.

"W. SCROGGS."

After this, a Petition of Sir William Scroggs was read.

To the Right Honourable the Lords Spiritual and Temporal, in this present Parliament assembled, The humble Petition of Sir William Scroggs, Knt. Chief-Justice of his Majesty's Court of King's Bench; sheweth,

"THAT your Petitioner, the last Parliament, was impeached before your Lordships, by the House of Commons, of several Articles filled High-Treason, and other great Crimes and Misdemeanours.

"To which your Petitioner hath now, with the first opportunity, put in his answer to this honorable House.

"Your Petitioner humbly prays, that your Lordships would be pleased to appoint the House of Commons to reply, that in a convenient day may be appointed for the hearing of the Cause; that your Petitioner may no longer lie under the reproach of the word High-Treason.

"And your Petitioner, as is duty bound, shall ever pray, &c.

"W. SCROGGS."

Ordered, That the copy of this Answer and Petition shall be sent to the House of Commons.

But the Parliament being soon after prorogued, this affair was dropped. However, the Lord Chief-Justice was removed from his high Station, and allowed a pension for life.

XXXV. The Report from the Committee of the Commons in Parliament, appointed by the Honourable House of Commons, to consider the Petition of *Richard Thompson of Bristol*, Clerk; and to examine Complaints against him. And the Resolution of the Commons in Parliament upon this Report, for his Impeachment of High Crimes and Misdemeanours; *Friday, December 24, 1680. 32 Car. II.*

The Report from the Committee of the Commons in Parliament, appointed to consider the Petition of *Richard Thompson*, and to examine Complaints against him.

As the Committee appointed to take into consideration the Petition of Richard Thompson, Clerk; and to examine the Complaints against him.

IN the first place, the Committee read unto the said *Thompson*, the heads of the Complaints against him; which (for the most part) he denying, desired to have his answers brought face to face: Whereupon the Committee proceeded to the examination of witnesses, to prove the said complaint.

The first Witness examined, saith, That there being a great noise and rumour, that Mr. *Thompson* had prepared a sermon to be preached on the thirtieth of January, 1679, the said witness went to the said Sermon, and did hear Mr. *Thompson* publicly declare, that the Presbyterians were such persons, as the very Devil blusht at them; and that the villain *Hampden* grudged, and made it more scruple of conscience, to give twenty shillings to the King, for supplying his necessities by Ship-money and Loan, which was his right by Law, than to raise Rebellion against him: And that the Presbyterians are worse (and far more intolerable) than either Priests or Jesuits.

The second saith, That hearing a great talk and noise of a Sermon to be preached by Mr. *Thompson*, on the 30th of January, 1679, he was minded to hear the same, and accordingly did; as which he saw from notes among which, he saith, that Mr. *Thompson* openly preached, that the Devil blusht at the faith; and that the villain *Hampden* grudged more to give the King twenty shillings, which was his just due by Law (Ship-money and Loan), than to raise Rebellion against him; and that a Presbyterian Brother, *qua* tutor, was as great a Traitor by the Statute, as any Priest or Jesuit whatsoever.

That he heard, that Mr. *Thompson* said, that he hoped the Presbyterians would be pulled out of their houses, and the Gaoles filled with them; and will tell their houses burnt.

The third saith, That he was cited to the Bishop's Court, to receive the Sacrament last Easter, but being out of town at that time, did receive it at a place called *Parl in Wiltshire*; and that a month after he came home, was again cited to the said Court; and he did accordingly appear, and told the Court, that he hoped his absence and business might be accepted for a lawful excuse; upon which Mr. *Thompson* immediately said, that they would proceed to excommunicate him. Upon which, this Informant produced his certificate, of which the Chancellor approved, and said it was lawful. Whereupon Mr. *Thompson* said, that his receiving the Sacrament from any other Minister, than the Minister of the Parish wherein he dwelled, was damnation to his Soul; and that he would maintain this Doctrine.

The fourth saith, That being at *Bristol-Fair*, he heard a great talk and noise of a Sermon prepared, and designed to be preached by Mr. *Thompson* against the Presbyterians, on the 30th of January, 1679; and that very many referred to hear him: in which Sermon, the said Mr. *Thompson* declared and said, that there was a great talk of a plot: but (says he) a Presbyterian is the man; and further added, that the villain *Hampden* scrupled to give the King 200. upon Ship-money and Loan, which was due by Law, but did not scruple to raise Rebellion against him.

The fifth saith, That Mr. *Thompson*, in a Sermon preached the 30th of January, 1679, did say, that the Presbyterians did seem to our *vile Mariage*, and that Calvin was the first that preached the *King killing Doctrine*; and that after he had quoted Calvin often, said, if this be true then, a Presbyterian Brother, *qua* tutor, is as great a Traitor as any Priest or Jesuit; and that then he commended all the Proceedings of Parliament.

The sixth saith, That he the said Mr. *Thompson*, had uttered many scandalous words concerning the Act for *laying in Wiltshire*, affirming, that the makers of that Law were a company of old Priests and Fanatics, and that he would bring a School-boy *should* make a better Act than that, and *convey* it when he had done.

The seventh saith, That Mr. *Thompson* in a Sermon by him preached (while Petitions for the fitting of this Parliament were on foot) speaking of a feared Rebellion by the Dutch, who had framed a formidable Army, and came as far as *Dorchester*, to deliver a Petition forthwith; and that they seemed rather to commend than petition their Sovereign to grant; and comparing that Petition with the late Petition on foot, greatly inveighed against it, and scoffed much at it.

The eighth saith, That Mr. *Thompson* (when the Petition was on foot for the fitting of this Parliament) was at the Funeral Sermon of one Mr. *Worship* these words (pointing at the dead, say), that he was no Schismatical pettinging Rebel, and that by his indignations, the Grand-Jury of *Bristol* made a judgement of their delinquency against petitioning for the fitting of the Parliament; that the said Mr. *Thompson* had told him, that he was Governor to Mr. *Norfolk*, when he was beyond Sea; and said, that he had been very often (and above one hundred times) at *Maid*, in the great Church at *Paris*, and usually gave Half a Crown to get a place to hear a certain Doctor of that Church, and that he was like to be brow-beat over to that Religion; and that when he went beyond Sea, did not know but that he might be of that Religion before his return. That he is very

conscientious, and frequently calls evil aspersions against several Divines at *Bristol* of great note, viz. Mr. *Clerke*, Mr. *Stansfeld*, Mr. *Griffin*, Mr. *Palmer*, and others, saying, that such as went to their Lectures were the brans of the Devil.

The ninth saith, That Mr. *Thompson* in his preaching inveighed bitterly against falsifying Petitions for fitting of this Parliament, saying, that it was the feed of Rebellion, and like to Forty-one; and that the Devil set them on work, and the Devil would pay them their wages; saying, that before he would set his hand to such Petitions, he would cut it off, you and cut them off.

The tenth saith, That about two years since, being in the Chancel of St. Thomas's Church in *Bristol*, where Queen Elizabeth's Effigies is, Mr. *Thompson* pointing his finger to it, said, that she was the worst of women, and a most lewd and infamous woman, upon which this Informant replied, he never heard any speak ill of her: thereupon Mr. *Thompson* said, he was no better than a Church-scurler, and that *Mex. VIII.* began it, and that the *Smith's* it.

The eleventh saith, That in the year, 1678, he waited on the Mayor to Church, and that Mr. *Thompson*, who was there, called at *Mex. VIII.* saying, he did more hurt in robbing the Abbey-lands, than he did good by the Reformation. That after dinner, Mr. *Thompson* comes to the Informant, and claps his hands on his shoulders, saying, *Hah, boy*, had Queen Elizabeth been living, you needed not to have been sword-bearer of *Bristol*. The said *Reverend* asked him Why? He replied, he loved such a lolly Rogue (so well) as he was; and he would have been very fit for her drudgery at *Bristol*.

The twelfth saith, That he heard a great noise of a Sermon to be preached by Mr. *Thompson* on the 30th of January, 1679, to the second part of the same Time; and that he was present at the same Sermon, in which Mr. *Thompson* said, there was a great noise of a Popish Plot, but, says he, here is nothing as it is but a Presbyterian Plot; for here they are going about to petition for the fitting of the Parliament, but the end of it will be to bring the King's head to the block, at they have done his father.

The thirteenth saith, That in January last, or thereabouts, there was a Petition going about for the fitting of this Parliament, when Mr. *Thompson*, in *Redhill* Church, in his Sermon said, it was a foolish and rebellious Petition, and rather than he would sign it, his hand should be cut off.

The fourteenth saith, The 8th day of April, he going to hear Mr. *Thompson* his discourse, speaking concerning the Measures in private; Mr. *Thompson* said, he would lead them out, and fill the Gaoles with them, and hoped to see their houses a-fire about their ears in a short time; and this he, the said *Thompson*, desired again and again.

The fifteenth saith, That about December, 1679, Mr. *Thompson* came to visit his mother, being sick; and discoursing of Religion, *Thompson* said, if he went as well furnished of other things, as he was of justification, auricular confession, penance, extreme unction, and such as he says, he would not have been so long separated from the Catholic Church. And further affirmed, that the Church of *Rome* was the true Catholic Church. He further endeavoured to prove extreme unction, and auricular confession, as well as he could, out of the Epistles. Further, he hath heard him say, the King was a person of a mean and soft temper, and could be led easily to any thing, but yet a *Solomon* in wits; but that the Duke of York was a Prince of a brave spirit, would be faithful to his Friends, and that it was our own fault that he was a *Roman Catholic*, as that we forced him to fly into *France*, where he embraced that Religion. About the same time, he the said *Thompson* said the Church would be militant; but greatly commended the decency of solemnizing the Mass in *France*; and that it was performed with much more reverence and devotion than any other Religion doth use. He further heard him say, in a Sermon, about the time of petitioning, he would rather cut off his hand than sign it, and had many bad expressions of it; that it was the feed of Rebellion, and his Forty and Forty-one. And further, the said Mr. *Thompson*, at one *Swadford's* shop-door in *Bristol*, speaking of *Bell*, said, that he was not to be believed, because *Bell* had fed his meaning Mr. *Thompson*, was at St. *Over's*, where Mr. *Thompson* said he was not; and that *Bell* was of a bad life, and in many Places, and not to be credited in anything he said. And that in another discourse he commended the *Romish* Clergy for their single life, and it himself to; and did at the same time vilify and rail at the *English* Clergy for marrying; saying, it was better for a Clergyman to be girt than to marry; and that the *Colombians* in *France* were idle men, and could scarce be two years a *French* without a wife. About the same time, after the Election of Sir *John Knollys* to this Parliament, Mr. *Thompson* said, he was not fit to be believed, and as bad as any Fanatic. He further said in the Pulpit at St. Thomas's, that after excommunication by the Bishop, without absolution from the Spiritual Court, such a one was surely damned; and he would pawn his soul for the truth of it.

Evidence added: Mr. *Thompson*, after the Evidence given by every particular Person, Face to Face, was asked to every one, if he had any question to say before they called another? Who answered, he should not say any thing at present. While the Witnesses before-mentioned were all examined, Mr. *Thompson* being desired to make his defence, and declare whether he were guilty of the matters laid to his charge, did for the greatest part contain words spoken to that effect; and in other things endeavoured to turn the words with more favour towards him.

proviso that the Statute of Monopolies should not extend to any Company for the ordering or managing of trade, tho' I think the words of the Statute did not reach this case, yet they were so careful, that they would have a proviso to last this and all other Companies. And, my Lord, there is a Statute, 2 Jac. cap. 6. by the preamble of which Statute it appears that the King had granted a Charter to divers Merchants to be a Company, and to have the sole trade into Spain and Portugal, excluding all others that were not members. The Statute recites the mischief of liberty to all the King's Subjects to trade there: I observe, the Parliament did not condemn the Charter to be unlawful, but took it to be good, and that no such liberty than an Act of Parliament could refuse the liberty of trade to the subjects against the Charter, for they do say, notwithstanding the Charter had given the sole right of trade to the Company, yet it should be lawful for all people to trade thence, notwithstanding that Charter. Now, my Lord, I do think that practice and usage is a great evidence of the Law: I shall show your Lordship some precedents of 14me Chartres, that have been granted to persons of a sole trade exclusive of others. 6 Ed. 2d. 25. *Elton* granted to *Abraham Gifford* and his associates the sole trade into China, prohibiting others. 6 Ed. 2d. 25. *Elton* there is a Patent to *Richard Baskin* to distribute new Countries that were hitherto and under Indulgence of a King of the Romans, there was a Patent to divers *Tiering Merchants* to have the sole trade to Turkey, excluding all others. 12 of Nov. 25th of the Queen, a Charter granted to the Turkey-Company. 5 July, 27th of the Queen, there was Letters Patents granted to certain Newcomen and Gentlemen to trade into Barbary, and that during twelve years more should trade there, but they, *David Agnew* and *Alphon*, 20. Eaz. a Patent made to the Merchants of *Amster* to have the sole trade to Rivers of in *Guinea* 14th of the Queen, another Patent to *Gregory and Pape*, to have the sole trade to *Guinea*. My Lord, all these I have now quoted, I have taken to be examined on the Rolls, and are to be found there. 2. *Bowditch*, 15th. there it was held by my Lord Coke, that no subject is able to trade in an Inhabited Country without licence of the King, for first of being persecuted from the Christian Religion; this my Lord Coke says, and he says he had seen an ancient precedent of a licence. *Mors*, 6. 5. *Davis* and *Alston*. *Judice Doodridge* (that I think was only then beginning) agrees against the Patent, but he did give that a Grant to a Company to have the sole trade with *Indies* is a good Grant, and the King by his prerogative might restrain his subjects from it: he admits a Patent for sole Printing was good; why, because the Publick was concerned. My Lord, the Parliament of late time have been so far from looking upon the *East-India* Company to be a Monopoly, that they have declared it to be for the good of the Kingdom, 14th of this King, chap. 24. in the preamble 'tis recited.

Now, my Lord, I have made good, that the King has this power by his Statute, by authority, and opinions of Lawyers, and also the judgment and the opinion of the Parliament; and that it was never condemned, and I conclude this first point. The second point, my Lord, at the next place, which I shall be very short upon, for that it will be consequential to what I have endeavored to prove here; that is, supposing it to be a good Grant, whether if any person do trade to the damage of the Company, 'tis a good ground for an action.

Now, I do think the Company have, and 'tis very plain they have an inheritance, and 'tis a franchise and liberty they could not have, unless they had the King's Grant, and others excluded from it, then it does agree with all the cases of this nature, whenever the King grants a franchise to one, and another person violates the franchise, the King's Prerogative may have an action of trespass, against the person that does offend or violate the franchise. 11 H. VI. 26. 14 H. VI. 24. supposing the King grant a man a Fair or Market, if any man sell on another Fair or Market, tho' with the licence of the King, yet he that has the Grant shall have an action. Now the *East-India* Company are to be at great charges, nay, there is a trust reposed in them, that they shall trade, and carry on this trade for the good of the Company, so that they are put upon a trade, and are obliged to carry it on. The Defendant hath no right; if they have a right, they shall have a remedy against any that invade it. And for these reasons

I pray your Judgment for the Plaintiffs.

Sir George Treby, afterwards Lord Chief-Justice, his Argument.

The Governor, and Company of Merchants of London, trading into the *East-India*, against Thomas Sandys. Trin. 35. Caroli Secundi Reg. Rot. 22b.

My Lord, I pray your Lordship,

I AM of Counsel in this case with Thomas Sandys, the Defendant. The Cause arises upon a Charter set forth by the Plaintiffs, and a Statute pleaded by us, and it is as Mr. Holt has opened it. Only I shall, for my part, open it a little more than he did.

It is a special action on the case, declarative, wherein the Plaintiffs declare, that King Charles II. our present King, by his Letters Patent, bearing date the 24th of April, in the 7th year of his Majesty, reciting that the Governor and Company of Merchants trading into the *East-India*, had been of long time a corporation, and enjoyed divers liberties, privileges, and immunities, by virtue of divers Letters Patents, and Charters, granted to them by Q. Elizabeth and King James; and the King being informed, that divers disorders and inconveniences were then lately committed, to the great prejudice of the said Company, and interruption of their trade. Whereupon they had humbly besought the King, to grant and confirm the said Charter, with some alterations and additions, tending to the advancement and benefit of their trade.

The King gives assent to these terms, that they shall be a corporation perpetual, to have succession and capacity, &c. And further, willed and granted, that they, and every one of them, or should be of the Company, and their heirs at their several ages of 21, and their apprentices, factors, and servants employed by them, might and should freely traffic, and use the trade of merchandise by sea, by each way and passages then found

and discovered, as they should think fittest, into and from the *East-India*; and into and from the Islands, Parts, Havens, Cities, Creeks, Towns and Places of Asia, Africa, or America, or any of them, beyond the Cape of Good Hope, to the Straights of Aden, as by the Court of the Company shall from time to time be limited and agreed, without any molestation, impeachment or disturbance; any Statute, usage, diversity of religion or faith, or any other cause or matter whatsoever notwithstanding, to have the sole trade by sea, not by land, or by Indulgence, to any Country, Island, Port, Havens, City, Creek, Town, or Place, already in the lawful and actual possession of any such Christian Prince or State, as at this present is, or at any time hereafter shall be an league or amity with the King, his heirs or successors, and who doth not, or will not accept of such trade.

And further grants, That they and their successors, and their fellows, servants, and assignees, in the trade of merchandise for them, and in their behalf, shall for ever hereafter have, use, and enjoy, the whole, entire and only trade and traffick, and the whole, entire, and only liberty, use and privilege of trading and trafficking, and using the said trade and trade of merchandise, and to have the said *East-India*; and to and from all the Islands, Parts, Havens, Cities, Towns and Places therein.

And further grants, that them, that the said *East-India*, or the Islands, &c. shall not be void, impeached or haunted by any of his Subjects, during the time that these Letters Patents remain in force, contrary to the true meaning of the said Letters Patent, and the virtue of the prerogative Royal. Charging also and commanding, and prohibiting all other Subjects, that none of them sell, haue, frequent, or trade, traffick or adventure by way of merchandise more or less any part of the said *East-India*, &c. unless it be by and with the licence and agreement of the Company, in writing set forth and observed under the common seal.

Here Sir declarator makes a break, or stop, and so it would seem as if the restraint and prohibition were absolute and general; but upon your prayer of the Letters Patents, they being set forth in these words, it appears to be, for made, under the following proviso, viz. Upon pain that every such other person or persons, that shall trade to or from the *East-India*, shall incur the King's indignation, and forfeiture and loss of the goods, merchandise, and other things whatsoever, which he shall be brought in to this Realm of England, or any the dominions of the same. As also the Ship and Ships, with the furniture thereof, wherein such goods, merchandise and other things, shall be brought or found, the one half of all the said forfeitures to be to the King, his heirs and successors; the other half to the Company. And further, all and every the said offenders, for the said contempt, to suffer imprisonment during the King's pleasure; and such other punishments as to the King, his heirs and successors, for so high a contempt, shall seem most and convenient, and not to be in any wise delayed, until they and every of them shall become bound to the Governor, in the sum of 1000. lib. at no time then to fail or traffick into any part of the said *East-India*, &c. And further grants, That the Company may grant and give licence under the common seal, to any persons to sail and traffick to the *East-India*; and that the King, his heirs and successors, will not, during the Letters Patents, give licence to any person to fail or trade there.

By virtue of which Letters Patents they allege they have been, and are a corporation; and have had, established and managed, and do still manage a great trade of merchandise to the said *East-India*, with the inhabitants there; who at the time of making the said Letters Patents, or since, were not Christians, nor subjects to any Christian Prince or State; but were, and are infidels and enemies of the Christian faith; and have spent and laid out many and great sums of money on that occasion.

And further say, that the commerce and trade thereof cannot be established, managed or carried on but by Incorporated Companies, by such a Corporation; and that they ought to have and enjoy the sole trade there, according to the form and effect of the said Letters Patents.

But the said Thomas Sandys being a subject of the King, and a member of the Company, not an alien, apprentice, factor, servant, or officer, sufficiently knowing the premises, and desiring to prejudice the Company, contrary to the form and effect of the said Letters Patents, after the making the same, and after the Company had settled their trade, on Jan. 25. 1600. did trade into the *East-India*, within the Parts, Regions, and Places above specified, beyond the prerogative of Good Hope, on that side the Straights of Mozambique, in certain Ports and Places, called *Aden*, *Malabar*, *Malabar*, and *Porta Nova*, with a certain Ship, called the *Expeditio*, without the licence, and against the will of the Governor and Company, and to the prejudice, impeachment, and manifest grievance, and against the form and effect of the said Letters Patents; to the damage of the plaintiffs 10000.

The Defendant prays Oyer of the Letters Patents; whereupon they are set forth in these words.

And thereupon the Defendant pleads the Statute, 13 Ed. III. Cap. 2. whereby 'tis enacted, That the Sea be open to all manner of Merchants, in pay unto their merchandise where it shall please them.

Upon this the Plaintiffs answer.

My Lord, I do not differ with Mr. Holt in the issue of the controversy, but make the same two points, viz. 1. Whether this Patent, as it purports an exclusion of all other Subjects from this trade, be good or void? 2. Whether here be an apt case brought?

In the first place, I shall not question but the Patent is good, to make these persons a corporation, and all the privileges and benefits they can derive from being a body corporate, they may enjoy, and apply them to trade if they will. Yet as to this particular, I shall observe thus much, that when such Charters of Incorporation were first taken notice of in Q. Elizabeth's and King James's times, they did not escape the censure of learned men, who foretold the ill use of them. *Co. Mag. Off.* 540. Three things which have far pretences are mischievous: 1. New Courts, 2. New Offices, 3. New Corporations trading into foreign Parts, or at home; which use for the furtherance of trade and government, an exclusion then to the hindrance of trade and traffick, and in the end produce Monopolies.

Deliberate says nothing of foreign trade; dies and affirms the Law of Monopoly, cap. 30.

Millicott's case is in 2d Brimble 296, and it is in these words: 1684. 7 Jacobi, in the Common Bench, upon a motion made for confirmation, upon a prohibition awarded, it was said by the Lord Chief, that no subject of the King may trade with any Infidel without licence of the King; and the reason of that is, he may relinquish the Catholic Faith and adhere to Infidelity. And he said, he had from a licence made in the time of Edw. III. where the King recited, that he having a special trust and confidence that his subjects will not decline from his Faith and Religion, licensed him as follows, and this did arise upon a recital of a licence, made to a Merchant to trade to the East-Indies.

For, To this tender authority I answer, If the Law had been according to this conceit, there would have been proceedings against persons that had traded to Granada, (of which the Affairs left the Dominions within these 200 years) to Barbary, to Turkey, and other Infidel places in Asia, Africa, or America; but we never heard or read of any till now.

Secondly, 'Tis an apocryphal case, that Book, called Brimble, is of little authority; it is printed without approbations of the Judges, or any legal persons.

And the conceit is of less authority, it is reported as *ad idem aliter*, upon a motion, a casual saying of the Judge; which the Cleric took, and likely misheard, for it is an ancient law in my Lord Coke's own Books, though they are very common. And the ground of his saying (if he did say) it is, that he had been a licencer in E. 6. III's time, but I cannot learn that it has been by any since. Neither Mr. Holt nor I can find it, nor does my Lord Coke tell us where it was; perhaps it was taken upon truth, and misheard, perhaps not authentic, and perhaps a sufficient answer to it would have been found in it, however, it was but one, and certainly, if the Law had required it, there would have been more than one licence from the beginning of our Records till that day.

Use His words, &c.

Thirdly, The reason there given makes strongly against this Charter, the reason is, lest men should decline from the Faith, to which it seems there is a special trust in the King, that he should suffer none to go into Infidel parts, but such as are orthodox, found and firm in Religion; each of whom the King is specially assured that they will not fall from the Faith, which is to be executed by the King only, and he is to grant licence to particular and known persons of whom he has this confidence, the King cannot grant his royal care to the Company.

But now this Charter would have this trust bestowed and transferred, for it contains a licence not only for the ten Members of the Company (who were twenty-two or twenty-three years ago), but their unknown successors, and to their true heirs, said to be begotten, and their Servants, Factors, Apprentices, &c. *in perpetuum.*

Mr. Holt also gives a reason for this trade being unlawful, namely, That the Law has judged Infidels to be perpetual enemies, for which he relies upon another singular saying of my Lord Coke in *Calver's case*, fol. 17. and returns two authorities cited there, namely, the *Regis*, 281. and 28 ff. VIII. 4.

And he takes notice that the children of *Israel* were persecuted from the true Religion by converse with the Nations round about them. And he cites *Genesis de jure belli & pacis*, lib. 2. cap. 25. par. 21. where he says, *Convivens quod ex animo concordes contraxerunt adversam legem.*

As to this singular opinion of Infidels being perpetual enemies, it is not easy to understand what my Lord Coke means by it, his words are these:

All Infidels are in Law perpetual enemies, for between them, as with the Devil, which subjects they are, and the Christian, there is perpetual hostility, and can be no peace; for as the Apostle says, 2d Corinthians 13. *Inter agreement is interit of Christ with Belials, or what part has the Believer with the Infidel?*

It is not by these words, that it is to be understood of a spiritual discord in respect of Religion, and not a temporal between the Nations: for he says, 'he because they are the Devil's subjects, and he relies upon the Texts of Scripture, and if this perpetual hostility be taken as a political and proper sense, and the Law be so, it destroys the licence and privilege of the Company, and their actions brought, and all possibility of such a thing for them. There is not nor can be any peace, treaty or intercourse between the English and the Infidels, but a constant never-ending state of war, and especially if it is founded upon a Divine Precept: for whatsoever peremptory the King may have, he cannot have a peremptory to dispute with the Canon of the Scripture.

But my Lord Coke himself does much clear this matter, *Jur. Co. 155.* where he says, that there may be peace and leagues of commerce with Infidels. All that the *Regis* & *Calver's case*, is that the Hostilities were admitted for defence *contra Christi* & *Christianos* in common; which is an expedition of the enemies of Religion, not of the State. In the book of *Henry the VIII.* he said indeed, that a prince outlawed, a Traitor, or a Pagan being seized, shall not have an action; it is true in case of an Out-law, or a Traitor, it may be pleaded in abatement; but not other Book says, nor can any man maintain that the Law is in case of a Pagan.

A Pagan, Turk, Jew, may maintain an action of debt or battery, or other personal wrongs; &c. were it otherwise, there could be no trading of the Jews here, nor of the Turks, the country whereof is implied and admitted in the Act of Navigation, 2d Charles II. cap. 18. paragraph 18.

By the like reason, there could be no trading with Infidels, where there ought to be an intercourse at all, for there is no Country where the Religion does not differ in some or other from the religion established in the Church of England.

And whatever be *Elys* of the Children of *Israel*, I think there may be some influence in the Old Testament of commerce with the Heathen, though I am not resolving such use of Divinity here, as nor is well furnished.

As to the citation out of *Gratian*, it is by way of caution only; but the whole drift of that chapter demonstrates, that commerce and leagues with Infidels are lawful, and he expresses that text of a *Cur.* which my Lord Coke borrows upon, to refer only to joining with them in idol-worship. And so there clearly the mind of that Author, he has sent a whole Book, intimated, *Mare Liberum*, to manifest the right and lawfulness of trade to

the *Indies*; and he says, that God in nature appointed all people to resort to, and trade with others, for that he hath given several commodities to fence, which others stand in need of.

I must leave here to say, that this notion of Christians not to have commerce with Infidels is a conceit absurd, monstrous, phantastical and phantastical.

'Tis a kin to Dominion founder in Gratian.

The *Indians* have a right to trade free, and use them, and this is a right natural and human, which the Christian Faith does not alter.

I agree with Mr. Holt, that an Act of Parliament made against the Christian Religion is void; but I think a Charter against natural and civil right is as certainly void.

Mr. Holt further says, that public safety and policy are concerned in this trade, and therefore it should be reformable by the Common Law; and he cites *Carver's case*, fol. 270. where several Merchants were punished for buying and transporting great sums of money, because (the Book says) it was against the State-Policy and safety of the Kingdom; and so punishable, and not permitted by the Common Law; and Mr. Holt says, that trading with Infidels is in like manner against the State-Policy too.

Ans. That was in the *Star-Chamber*, and perhaps it was one of the errors for which that Court was dissolved, 2d Cor. 1. cap. 10. in which Act it is said, that the Judges of that Court had undertaken to punish where no Law did warrant.

If transporting of money had been prohibited by Common Law, the Statute of *R. III.* cap. 1. and 5 *R. II.* cap. 2. (as had been actually) before these Statutes every man might dispose of his own private money as he might think fit, and *Carver's case* the offence seems to have consisted in sending great quantities of money, and so it more fully appears in a contemporary report of the same case, in the fifth case added to *Peppin*, 149 and 250. where it is said, that as one shall be punished for ingrossing commodities, so another for great quantities of money, all other commodities being thereby ingrossed. And this point of *Carver's case* is a good authority against the privilege claimed by the Company, which in truth is nothing else but to entitle to themselves all the commodities of *India*, &c.

But if the Common Law would have all the treasure kept within the Realm, it does not follow that we must keep all other commodities, and have no trade at all; at least without special licence, I know no State-Policy or Law for that.

In the next place, Mr. Holt considers foreign trade, and says, the subjects have not a right to trade abroad, or *ad extra*.

Ans. This is against the former argument and the ground of the Plaintiff's declaration, for that was, there should be no trade to these places, for a special cause, (viz.) because they were Infidels; but this argument imports, that these ought not to be said to be at all abroad, so not with Christian countries, without the King's licence.

The reason which he would support this argument is, because trade depends upon treaties, and upon the accidents of peace and war, which the King has the power of.

But this shows the former argument, for Infidels he says are perpetual enemies, and if so, there is no place nor treaty with them, and therefore no trade to be (as not by the Company) with them.

Besides, allowing there may be peace and treaties with them, I cannot see how this consideration can conduce to the present question; for it cannot be pretended, that the King must league with *Indian* Princes, that one part of his subjects should trade thither, and the rest should not, or that the King is or can be in amity with them, as to one part of his subjects (namely the Company), and in enmity with them, as to the other of his subjects.

The King has, and it is to preserve, the highways, but it is to keep them for the passage of himself and his people; not so that them up against any of his people at least, except as a case of war.

He cites the Statute 12 *W. III.* cap. 6. where the Merchants-Adventurers say, they had commerce with *Spain* and *Portugal*, and other places in leagues and amity with the King.

No doubt they had, and beyond this it truly said in the same Statute, that of right they ought to have it, which shows that it was not by the King's grant or licence. And in like manner the Defendant of right ought to have trade with the *Indians*, there being no war betwixt this Realm and them.

He cites out of *Roll's Abridgment*, 2 *Pars.* 212. a note of *Rot. Parl.* a *H. V.* an. 22. where the Commons say that all Merchants may export and import to and from any place, any goods at their pleasure, pay no the customs and other dues, any proclamation notwithstanding; the King answers, that he will be served by his Council.

And Mr. Holt takes this to be an acknowledgment by them of the illegality of the Proclamation.

Ans. It is not so, for it was the custom then, to propose and pass declaratory and confirming (as well as other) Laws, by way of Petitions to the King; and though they thought the proclamation illegal, yet it was more proper for them to endeavour to obtain redress by prayer than contest. But their Petition was a Petition of Right, and the Proclamation (especially if there was no war a-foot) was void, being a void the Common and Statute Law. And to cite and to say such a Proclamation, is to sit up presence to the Law; and yet I take it there was an extraordinary occasion at that time, *Hen. V.* having occasion to lay an embargo on his ships, in order to his proceeding to his great war in France.

He says that foreign trade may be mischievous, it may be a nuisance, for the importing of *French* cattle and *French* goods have been declared to be by the Parliament, and the King may restrain such evils.

Ans. The Acts of Parliament were making, and they enact it shall be adjudged a common nuisance. They did not find and declare it to have been one before.

If it had been so, there had been no need of these Acts, and we know the reason of that clause was to make the matter dispensed with.

If the importing *East-India* commodities be a nuisance, it is not licentious, and the Company cannot maintain their trade, much less their action; unless it should be thought that the bringing in or taking commodities by the Defendant is a nuisance, but the bringing in the same by the Plaintiff is not.

He infers this with a reason, that there may benefit result from the abundance of the importation exceeding our exportation, and resembling to what

is laid on *Rep. 12*. And by the Common Law the King ought to save and defend his Realm as well against the Sea as against enemies; that it should not be drowned nor wasted, and as the King may prevent inundation of waters, so he may as to trade.

Alfo. This is a frivolous in words, but not as to the nature of things, and if there be any force in it, it is against the Plaintiff, for therein not in their Charter any limitation, the Company may bring in as much as they will, only, it seems by their allegation, that this trade is to be managed most largely by means of the Company, and therefore tends to the danger of the State.

Mr. Holt makes it a great argument to maintain the Charter, that it is a necessary regulation of the trade, and that the trade could not have been settled but by such a Company; and says, if it should be laid open, it would ruin the trade both of the Company and the Defendant.

And it is asserted in the declaration, that this trade cannot be managed, but by *lawful Corporate Corporation*.

Alfo. This contradicts *Michelin's* case, for that was upon a licence granted to a single Merchant to trade to the *East-India* and it is known that this trade has been managed by persons previous before, and since there was a Company.

And this is to fix up convenience or pretence of convenience against the Statute, which we have pleaded, says, that all trade shall be open; the Plaintiff says, it shall be open to them only, because they can manage it best.

If other men should find that they could manage it better, the pretence were as fast for them to exclude the Company from the trade.

But I except against this argument, it is a frivolous and impossible argument, no issue can be taken upon it, unless issue should be taken upon a similitude, (*viz*) *by lawful Corporate Corporation*.

If a licence were granted (as it is laid to be in *Michelin's* case) to one man to trade to the *East-India*, and he should bring such an action, and aver that the trade could not be managed but by such an one as he, it would not be good, and yet as good as this is. In an action for words, it is not allowable to allege that the Defendant spoke such words, or *say* such words.

Moreover, the declaration, as it is penned, contradicts itself, for it says, that the trade could not be managed but by the Company, and yet charges the Defendant that he did manage a trade there; which is not possible, and it is penal enough upon the Defendant that he attempts to manage trade where he cannot.

Mr. Holt objects, that the Statute we plead, ought not to be taken universally, that the Sea shall be open to all Merchants; for then it would extend to give liberty of trade to the King's enemies who are Merchants.

Alfo. True it is, neither this, nor any such Law extends further than to Alien Armies and Subjects, there are *pure belli*, as well as *pure pacis* and it is understood, that countries who are foreigners may be taken and proceeded against according to Martial Law; but the Defendant is a subject, and cannot be as enemy.

He says further, that this Statute should not extend to this trade, because that in *Edw. III's* time, when it was made, trade was driven with Christians only, and not with Infidels.

It is this he, it defrays the only authority he has (*viz*) *Michelin's* case, where the only ground of the opinion is, that there was a licence granted to trade with Infidels, in the time of the said *Ed. III.*

But this Statute must be taken as it is penned, universally, and not confined to those countries, places and persons which were then used; the Statute does not distinguish, *Et ubi lex non distinguit, nec auctoritas*, otherwise no man must trade, but to those few places that he can pass were traded to before, 18 *Ed. III.*

He says (as *g. v. h. 35*.) that the King may refrain men, by *Non Est Respon.* from going beyond Sea; and cites *Devin*, *g. h.* that one reason of the King's being intitled by prescription to the great custom, was for his leave to Merchants to go and carry goods out of the Realm.

Alfo. It is true, that Book of *Devin* does say so, but he cites to prove the opinion, *Devin*, *163*. And the Statute, 18 *Ed. III.* which we have pleaded; is that that Book is of no further use, than the assertion upon which it is founded do warrant; which if we examine, we shall find that in *Dor* it is, among other things, trade a power, in a case referred to the Judges concerning a new imposition set by Queen *Mary* on Merchandise, whether by Common Law Merchants were, or might be restrained from going out of the Kingdom, without leave of the King or Queen; to which the Judges give no refusal: which shows, they thought the Law was, that there was no such restraint or need of leave, for when Judges give no refusal, in the case of the King, it is a sign that at that opinion the Law is against him; and for the Statute, 18 *Ed. III.* which we plead, is against him.

N. N. B. 3. *g. v. h.* is a statute, that by Common Law, every subject may go out of the Kingdom for Merchandise, or Travel, or other causes he pleases, without leave, *F. Co. M. Co. 180.*

g. v. h. 36. A Refrain people putting out, but it extends Merchants, and even that Statute is repealed, 4 *Jack.* cap. 1. 'tis clear that the King may refrain his subjects from going out of the Realm, by his Writ of *Non Est Respon.* But that Writ was originally for the Clergy only, and a properly granted for manner of State only; and the words of it are, *Quoniam plures sunt de Clerico Angli prelati et alii quodam prelati*. Of force indeed it has been extended to continue a prelati to abide the Justice of a Court here, but that is no further. It is always to restrain a man from something unlawful, and against the duty of a subject, never to restrain from a lawful Act, to trade.

Neither is it general or universal, but always particular, and granted upon oath, made concerning a particular person; and since there needs such a special Writ to restrain an obnoxious person, it proves the Law to be, that all other persons are at liberty to go.

And there was no *Non Est Respon.* against the Defendant, nor cause for any; and if there had been, and he had gone against it, though it was an offence to the King, it would not give cause of action to the Plaintiff.

He cites *Co. L. 1. g. v. h.* That no subject can build a castle or a fortress without the King's licence, and it *Rich. 2. v. Co. Magna Charta* 109. that no man can put a prison without the King's licence, and *11 H. VII. 13.* that the King may licence, where it sits kill another, it is no felony.

Alfo. These influences are in our case; a man may go build castles without the King's licence, any more than raise towns, or dig private havens, which are *jure regis*, and the King's grace; a man, but take away the lives of the King's subjects; but there is no private reason, that a man should not sit an innocent trade.

It is more suitable thereto, to suppose, that a man may without licence build a house, or erect a bridge, and include a garden or field, and thereby prefer the life of himself and his family.

In the next place, *Mr. Holt* says, there's a great deal of difference between trading in a Company, and trading out of a Company; that this Charter is good because it gives the trade to a Company, and being a Company, and Christians, they will take care that their Agents and Factors keep up to the Christian Religion; but other people will converse only with Infidels, and cannot have Divine Offices.

Alfo. It is not required by the Charter, that the Members taken into the Company, should be Christians, and their sons, friends, and others may be so Christians, not as they bound to his Divine Offices. And the Defendant and others are themselves Christians, and may have Divine Offices as well as they; and in this trade, the Defendant and others will converse with the same persons, as the Company and their Agents will; or, as it is, then it is no interfering, so cause of complaint.

He observes out of the Journal of the House of Commons, 14 *Ed. 3.* that the House of Commons laid vigorously upon Monopolies, and then, was brought in a catalogue of them, but there is nothing of the *East-India* trade, that there was such a Charter then in being.

Alfo. I know not whether there was such a Charter then in being; but if there were, possibly it was not taken notice of, or possibly its grievance then appeared from it, and likely that Company was better advised, than to misadvise to restrain others from trade.

Further, I have heard a Vote of the House of Commons cited sometimes, but never knew the date of the House of Commons cited for authority before; doubtless in that Parliament, as in other, the Members complained of those grievances, which then affected the Boroughs and Places they served for; they undertake not to commend all the Monopolies, that were or might be, and it is most modest, in order to obtain redress, to limit their complaints to the present occasion.

Mr. Holt mentions three Statutes, 3 *Hen. 6.* cap. 6. three having been a Charter obtained by some Merchants for sole to the Dominions of Spain and Portugal. It is answered, that it shall only be lawful, for all subjects to trade thither, notwithstanding that Charter of any other; and therefore he says, that the Parliament takes the Charter to be good, and therefore not to it the trade shall be laid open.

Alfo. There is no ground for this instance.

Edw. 3. It seems a strain to bend the Plaintiff's own former plea, that it related to a trade to Spain or Portugal, which are Christian Countries.

Secondly. The preamble of the Act 15th relates enough to deny the Patent at Common Law, (*viz*) that all subjects ought to enjoy equally the benefit of peace and free trade; that whereas the subjects of England would be in a worse condition than that of Scotland and Ireland, that it was intended with the improving of Merchants, Manufacturers and Manufacturers, lessening the price of their commodities, and increasing foreign, &c.

Thirdly. The Act calls it a common trade, and does not only say it shall be lawful, but that there shall be free liberty to trade there, in such sort and manner as is accustomed; that the Act did not make the Charter illegal, but found it so, as being an innovation against what is used and ought to be.

Alfo he mentions the Statute of Monopolies, at *Jack.* cap. 3. where in he observes, there is a proviso to give the Companies or Societies of Merchants. And the Statute 14 *Carol II.* cap. 25. which in the preamble declares the putting in or Stock into the *East-India* Company to be for public good.

Alfo. That last Statute indeed in the preamble says, it is for public good, but it is the public good of the Company; and the time presently says, that diverse Noblemen, Gentlemen, and other persons of quality, have by trade or merchandise, had put in Stock there; and enacts, that they shall not as that respect be taken, that the Statute is to be a Commission of Bankrupts; whosoever I might observe, that this Company is not to be reckoned a Company of Merchants, and therefore not within the proviso, at *Jack.* above-mentioned.

But I give this further answer concerning that proviso: the words of it are, Provided also, and it is hereby further intended, that declared and considered, that this Act, or any thing therein contained, shall not in any wise extend, or be prejudicial to the City of London, &c. or to any Companies, or Societies of Merchants within this Realm, except for the maintenance, enlargement or settling of any trade, or merchandise, but that the time, and their liberties, privileges, powers and immunities shall be, and some of the force and effect of which, as they were before the making of this Act, and of more effect; any thing before in this Act to the contrary in any wise notwithstanding.

Now gives this a but a general saving, and supposing, as *Mr. Holt* does, that there was such an *East-India* Company then in being, if the Statute had had as favourable an opinion of their Charter, as they had of *Monopolies* or *Manufactory*, or the other clause mentioned, they would have loved it by particular mention, as they did those, which would have been more convenient to such a Charter.

Secondly. Admitting it loved generally or particularly by the proviso, that does not make it better, the proviso only says, it shall continue as good force and effect, as it was before of the making of the Act, and none other; if notwithstanding the body of the Act, it was a Monopoly and void before, it shall remain so; and if it were good before, it shall remain so, notwithstanding the proviso.

If it is asked, in what purpose the proviso was made, it is answered clearly that, the Statute giving an additional penalty of treble damages and double costs against any person, that should, after forty days, after the end of that Session of Parliament, hinder, grieve, disturb or disquiet any person, or any ways seize, attach, distress, take, carry away or detain his goods, by licence or pretence of any Monopoly, or of any such Commission, Grant, Licence, Power, Faculty, Letters Patents, &c.

Now the proviso appointed that nothing in the Act shall extend to any Society or Company of Merchants; it does profess that their hinder, grieve, disturb or disquietment; by seizure or pretence of such a society or Company from that penalty; so that the Plaintiff have this advantage

own the prohibition or restraint, and stop there, as if the prohibition were absolute and general; whereas it is *sub modo*, under a special penalty of forfeiture.

And this appears upon *Oyer*, and therefore for this variance, judgment ought to be for the Defendant, if there were nothing else in the case.

But waving this concerning the form of the Suit, I insist upon the main matter.

There is a natural necessity that every man that will live must eat, and thence a necessity and obligation to labour; and there is a property in this means of livelihood as well as in life.

The King's power and prerogative is to establish and preserve this to all his Subjects.

Trade is one of the honestest and justest sorts of industry, and is more especially proper for an Island.

The King cannot prohibit merchandise, nor lay a penny imposition upon it; therefore our Kings have received tithes and payment from the Grocers of Parliament: whereas if they had such a power (as the Plaintiffs Counsel speak of) over all trade, they might by the means of that, have made an unsearchable rule to fish a revenue, without the consent of the Lords and Commons.

Restraint of trade (though but for a time or place) is one of the great things which has been always referred to, and exercised by authority of Parliament, as we find almost in every Session.

This which is now before your Lordship, is the greatest Monopoly that has been attempted. It monopolizes *Africa, Asia, and America*, it holds on the South; it devours above half the trade of the Nation, the trade of Linens from *Holland, Flanders, and Heland*; Silks from *Italy and Turkey*, and when the prohibition exports, from *France*; and affects our Manufactures at home, upon all which the livelihood of many thousands depends.

It is against the Common Law and many express Statutes.

No man was ever punished, at any Court, for using foreign trade; no, not in the *Sier-Clanier*, which extends the prerogative much. It is *Case pro me in premissis*, although there has been occasion to have had precedents, if any such accident could have lain.

But as this is the first that has been brought, I shall presume to be receptive that just discouragement from your Lordships, that it will be the last.

And

I pray your Judgment for the Defendant.

Mr. Solicitor-General Finch (afterwards Earl of Nottingham) his Argument.

De Tera. Pasch. Ann. Regni Rici Caroli Secundi XXXVI. Die Sabbati xix Aprilis, Anno Dom. 1684. Bona Regni.

'Tis the Eng-India Company against Thomas Sandys.

MR. Justice WILKINS. Mr. Solicitor-General, do you argue that case to-day?

Mr. Solicitor-General. Yes, Sir.

Mr. Justice WILKINS. Mr. Paley, do you argue on the other side?

Mr. Paley. I do, Sir.

Mr. Justice WILKINS. Then, Gentlemen, let him come down to the Bar.

Mr. Solicitor-General. My Lord, this is an Action upon the case, brought by the Eng-India Company against Sandys; wherein they do set forth that the King, reserving former Letters Patents granted to this Company to incorporate it, did grant a Charter to such particular men, and made them a Corporation by the name of the Governor, &c. and did grant to them the sole trade in all the parts upon the Coasts of *Africa, Asia, and America*, in the *Case of Good-Hope to the People of Madagascar*. And further, that he did likewise grant to this Company and successors the sole trade; and granted likewise to them, that no other of the King's subjects should trade within those limits, and did expressly prohibit his subjects, to trade thither, nor being of the Company without a licence from them. Then they say, that Mr. Sandys, being one of the King's subjects, did take upon him to trade within the limits of those Letters Patents, to wit, at *Madagascar*, not having a licence from their Company, or any other authority to do it. And thus they lay to their damage of 1000*l*.

Mr. Sandys to this, after he prayed *Oyer* of the Letters Patents, which are set forth in *two orders*, pleads the Statute of 18 E. III. which says, that the Sea shall be open, and all Merchants shall go with their merchandise, where they please. To this Plea we have demurred.

Upon this Record, the Questions will be these two:

First, Whether the said Patent to the Eng-India Company, which prohibition to all others to trade within their limits, therein set forth, be a good Patent? The next is,

Secondly, Whether, admitting it to be a good Patent, this action will lie; that is, whether it be a bare licence to the Company, or whether it pass such an Interest to the Company with that licence, as will entitle them to an action against any that shall intrude or encroach upon their trade?

First, My Lord, I am to prove that this Grant is good, and here these considerations will fall in.

First, Whether the King had power at Common Law to have made such a Grant?

Secondly, Whether that power be in any ways abridged by any Act of Parliament, as it is much insisted upon by the other side?

First, My Lord, that the King had such a power at Common Law, I conceive is plain, for these reasons:

First, Because no subject at the Common Law had a right to trade with Infidels, no nor to go thither, without licence from the King first had and obtained.

Secondly, No such trade can be established without precedent treaties, and no such treaties can be made by subjects, without licence from the King to make them. If therefore this Patent does not contain any natural liberty or right that the subject had, but is introduction of a new one, they had not before; it will not fall out to be within the definition of a Monopoly, in which it is one essential part that it takes people from that liberty they had before.

Now that no subject had a right at Common Law to trade with Infidels,

or go into an Infidel Country, without licence from the King, will be evident thus. And,

First, It will be very considerable, before we enter upon that Question, particularly, to see how all right in general to trade stands circumstantiated; and there it is plain.

First, That there is no trade, but what depends upon the good-will and pleasure of the foreign Prince with whom it is, whether he will admit or no; that is pretty clear.

Secondly, This may be restrained by a total prohibition of any commerce with that Prince or Nation, by the King here.

Thirdly, Tho' every man now, and Merchants always were at liberty to go abroad without licence, yet the King may restrain any man by the *Writ Nulla Regum*, from going out of the Kingdom; and that without showing any particular cruel way, or alleging any manner that is unreasonable and suitable with the King. And,

Fourthly and Lastly, If any foreign Prince, upon concluding any league or treaty with the King, should restrain trade to any number of persons, or any particular qualification of manner of proceeding in it; I do not know any man can pretend to a right, to act contrary to that, in breach of such a league or treaty made with the King by such a foreign Prince.

Then we lay further, by the Statute of 3 and 4 *Jack*, which opens the trade to *Spain and Portugal*, that does show plainly that that trade was before inclosed; and it does not show that the inclosure of it was illegal, but gives a right that was restrained before; and yet I am far from affirming that the subject has no right to trade, tho' it has been objected that this elaps in, and makes it as none; and therefore, they held it absolutely necessary to establish that power and prerogative, which the Law, for the public good, does reserve in the King, and that upon reasons that will not hold, nor are to be urged in decency: for I take it, the possibility of the abuse of power, is no objection against that power. For by this argument, tho' the King has a power and prerogative by Law to restrain subjects from going beyond Sea, by a *Nulla Regum*, so, by law, he cannot; for those he may restrain all his subjects from going out of the Kingdom, and so imprison and hinder every one from going out of the Nation. It is the same argument with this, that they urge the King claims a prerogative to restrain such trade upon occasion; they say this argument cannot hold, for by this rule he may restrain all commerce and trade whatsoever; to that end way of arguing does strike at all power, and I need give no other reason for it, for there can be no power at all, which is not accompanied with some trust; and there is no trust, but it possibly (mocking speaking) may be broken. So that this is no argument against the right of the subject to trade on the one side, nor against the prerogative of the King on the other, in whom the Law has reserved a trust to regulate and qualify trade.

But, My Lord, in this case the question is not of so large an extent, nor so general as this: not only here it is a question, how that right stands with respect to Infidels, and that is the question before your Lordship.

And I cannot but observe, in my entrance into the question, that unless the Law had once been held clear in this matter, this could not have come to be any subject of debate now, for no such trade as this, could ever have been granted to the Nation, for none could have ventured upon to hazard an enterprise, or to chargeable a project as this was, if it had not been any doubt whether those that ran no such adventure should be admitted to carry the first fruits of it.

So that this question, as it tends to overthrow this trade, if the Law be taken to be as they would have it, so it overthrowes the *Turkey* trade too, which stands upon the same foundation, with respect to the prohibition by Letters Patents as this does: for the question is not, upon how early terms the privileges are to be obtained, as it is contended the terms are easier in the *Turkey* Company, than in the *Eng-India* Company; but whether any terms at all are requisite; so any terms can be imposed upon it, then this case is all in one, when that will overthrow the *Turkey* trade, and all the trade of the Nation. And surely if they can prevail in this question, the subjects, for whose right they pretend to march to stand up, will have little cause to thank them for standing up for a right, as they call it, against the very Interest of the Nation. But to return to our argument:

The subject can have no such right to trade with Infidels without licence from the King; for they are looked upon as enemies, not only in a spiritual sense, as they are of a contrary Faith and Religion, but they are in treated in Law; and the religiousness of the Law are such as we may see in *Calvin's case*, and the 12 H. VIII. which is a Book they cited, and was quoted here before, upon the first argument of this case; where it is held, that a Pagan, tho' he be known, cannot have or maintain any action at law, because he is *perpetuus inimicus*: for an Alien Enemy can neither maintain a real or personal Action, as it is said in the 15th 15th 129. B. 4. as a Jewess, though here before, and marrying a converted Jew, shall not be endowed; and so in the same Book 32. so that they are look'd upon no more than common Aliens; for we see that tho' they are born here, yet they have not the capacities as much as of Denizens, for they shall not be endowed, as Denizens may. And tho' my Lord Cok, by the way, says, in that Book, no Alien can be endowed; yet I find in the Parliament Rolls a Petition of the Common, it is in 14 E. V. m. 16. they pray that Female Aliens may be endowed, and the King's answer is, *Let it be as is intended*. But I mention that only by the bye, for it is not at all relating to our question, but for that the other relation goes to it, as I have said, it is always to be considered as an Enemy.

But, My Lord, further, that all Infidels be likewise Aliens and Enemies, in respect of their properties which they gain here; it is to be gathered from what I find in *Rot. Juian* 50 H. III. m. 9. the King releases a debt, that was owing to a Jew, and in the same Roll, 49 H. III. *Rot. Juian*, there are divers pardons of debts owing to Jews, *Lene* in recompence for service done, and others in expiation of the pecc, that they had drawn in to be engaged for great sums to them.

Rot. Parl. 13 E. I. m. 4. A Jew died, and the King granted away his goods, and his Widow received them for 1000*l*. and the King granted to the Jewess, that he would not discharge any debts, that were owing to her. This shows their properties were all at the King's mercy; and hereafter the King grants licence to them, and gave them leave to assign their debts, *Rot. Parl.* 3 E. I. m. 6. which recites that it was granted by King H. III. that no Jew should sell his goods without licence. The King grants a licence to *Jude Nighe* to sell a debt of 20*l*. that was owing him from the

Bishop

Bishop of Bath and Wells; and dissolved the reason of that Law in Hen. III's time, was, that the King might prevent any mischief, that might follow upon an unlicensed commerce between his Subjects and their Infidels: and that appears plainly by considering, that by the ancient Law of the Land, so few could inhabit where within the Kingdom, but where by custom they were permitted to dwell; and so in *Rot. Clauf. i. E. 1. m. 7. in duple*, they had gone and inhabited at *Winchester*; but they were removed thence, and the Record tells you the reason why, *devoid*, &c.

They had particular Justices assigned over to them, to determine their causes, and that you see *Rot. Clauf. 49 H. III. m. 4.* the King constitutes two Justices at *Cyrtel*, *Ydsarven*, and gives them power to determine their Pleas in the place, where they were accustomed to inhabit.

And there is in *R. v. Parl. 13 E. 1. m. 7.* a very remarkable Record to this purpose, *Res Adito*, &c.

My Lord, I had another Record like this in the Patent-Rolls of that year, for we for what cause the Law took, that Christians should not be circumvented by the Jews; and the Government had an eye upon them, that they should not have commerce one with another; that recognitions should be entered in the presence of Christians. That Record is thus, *Res adito*, &c.

We see for a man, that deals with a Jew, and buys things of him without Licence, and the King grants that he would not trouble him, or proceed against him by Law for that offence.

By the ancient Law it appears, that if a Christian married to a Jew, it was felony, and the party offending was to be burnt; so in the *3d Edw. 1. fo. 10.* and there is my Lord Coke cites *Plow* for his authority in it.

From all this it appears, that Infidels have no right to trade and traffic here, and surely there no Subject has a right to trade with them in their country; for the restraint certainly must be mutual. And, my Lord, for this, I must remember you of a case that has been cited in this case, and that is *Michell v. the King* in *Edw. III's* time, where my Lord Coke declares the Law to be that we say, and that he hath seen a Licence in *Edw. III's* time; and that he says was for the safety of Religion.

And surely, my Lord, it is upon some such grounds as this, that the Law provides that no excommunicate person shall bring an action, no not in *astrud*, because no person must converse with them; therefore, they cannot sue, or be sued by any person. Then if the Law be cautious for the safety of Religion, as to restrain converse in our country; I foresee it may restrain the Subjects liberty of trading in an Infidel country, where they must be under the Laws of the place; and the inconveniences in the one case are sure much greater than in the other.

For we see in *Colin's* case, if the King conquers an Infidel country, their Laws actually cease till the King gives them new ones. But 'tis otherwise of a Christian country, for there the Laws remain till the King is pleased to alter them.

Another reason, my Lord, is this, the King's prerogative in making leagues and truces, is sure as large and unlimited as the Subjects right to trade; and yet in the case of Infidels that is restrained, as to some sort of leagues that a Christian Prince cannot make with them, &c. For that you may see in the *4th Edw. 1. 155.* where my Lord Coke says that the Law of England is so, that the King can't make *Feder* made *amici et admi*, with an Infidel Prince. And there he reckons up four sorts of leagues, three of which he says may be had with Infidels, that is, *Feder Pacis*, *Feder Co-operativitatis*, & *Feder Commercii*; but *Feder mutui Amicitie*, he says, by Law is not allowable; and hence these leagues are grounded upon the Law of God.

Therefore, my Lord, the Law surely does not give the Subject an unlimited freedom to trade, but it must depend upon such cautions and security, as nothing has such leagues can provide for; which leagues I am sure none but the King is capable of making.

This then, one would think, were enough to clear our Patent from that objection, that 'tis a Monopoly. But there are no other things, that make it yet more evident it is not so. As first, in all the complaints that have been made of Monopolies, that Patent was never counted to be one among them, nor thought to be illegal; if it ever had been thought so, the Statute of *21 Jac. 1. cap. 3.* which is a Statute made for regulating of trade, would never have been made.

In the next place, I say either the first Patent for this trade was a Monopoly, or this is none: the first was none, not only for the reasons I gave before, but because it was a new trade. Patents for new Inventions are not made good by the Statute of *21 of King James*, but left as they were before, only they are restrained to a number of years, and were always good, because they were for the encouragement of trade, and of useful inventions to increase them.

As for the second in this case, what is of much greater consequence to the Nation is a point of trade, than any little slight increase of a revenue to the Nation is; must be allowed to be good; then I say, sure if the first Patent be not a Monopoly, then neither is this Patent a Monopoly; for there is no Law that hath declared how long such a trade as this may be inclosed, as the Statute of *21 of King James* sets limits for, as new Inventions.

And again, this Company is for the advantage and benefit of the Nation, which a Monopoly can never be; and that it is for the benefit of the Nation, appears by the Statute of the *13th of King Hen. 8. cap. 34.* which recites it to be of great advantage to the Publick, and for the encouragement of the Publick Trade and Navigation. Here then, my Lord, is both the Judgment of the Parliament concerning Companies of this kind, and an encouragement of this particular Company by the whole Parliament.

And again, they are taken notice of in another Statute, made in the *20th of this King*, *ch. 6.* where they are taxed 20s. for every 1000 l. capital Stock in the Company.

Another reason in this, because of the absolute necessity of a Company to manage this trade, not only in respect of the Indians themselves, but also in respect of other foreign Nations, who are rivals to us in this trade, and are ready to take all advantages against us about it. But this part of the Case is much more fit to be discussed by Merchants and Statesmen, than Lawyers.

Yet thus far the Law falls in to consider this matter, as they are a Corporation under Statutes and leagues with other Countries for the cor-

rying on of their trade; and so are in the nature almost of foreign Plantations, under a regulated and Christian Government among themselves, whereby these merchants are prevented, that would have fallen upon an unlimited and unregulated trade with Infidels, that are enemies to our Religion and Nation; which the Law, as I have already shewn, takes so much care to prevent.

For other considerations, whether this trade be driven to the full extent of it, or may be more advantageous to be enlarged, as it is proper here to be discussed in a Court of Law, to the Application for that must be made elsewhere; for I do not know any Law that hath made the Defendant a Reformer among us.

My Lord, in the next place, the next question is, whether this prerogative of the King is abridged, or restrained by any Act of Parliament, as is insisted on by the Defendant's Counsel; I think not. For,

First, In general, the chief trade of this Nation consisted anciently mostly in *Wool*, *Wool-Fell* and *Leather*, and with our neighbouring Nations only, and yet,

Secondly, Even that trade was restrained in the exercise of it; for some men buy and sell, but he must do it at the Staple, as appears by a *2d Ed. III. chap. 4.* that obliges the people, and afterwards it was enacted again. And then in the

Third place, there was no such trade as this or any other ever established with Infidels in those days, and so there was no occasion for such a Law to restrain them.

The best rule therefore to interpret this Act of Parliament, will be to apply it remedy to the inconvenience and mischief that was before it. If then there was no such inconvenience as the complaint of the restriction of the trade with Infidels; then all may easily conclude and infer upon it, there was no such remedy as the laying open of a trade, as they alleged, intended to be introduced. But if we consider the Act itself, we shall see some particular reason for the making of it, rather for the taking off some clogges, that were upon the trade then in use, or the providing some remedies which were introduced to obviate the poeple's inconveniences and mischiefs.

First then, for *Mogea Charta*, which hath been cited *chap. 30.* that gives liberty to Merchants, *Quod nisi publici antea prohibiti fuerint, habeant liberos & forem conditione civitatis Anglie*; it is in *Anglie*, & it is in *Anglie* & it is in *Anglie*, *non per terram quam per equos, ad omnem finem*; it is in *Anglie*, *non per terram quam per equos, ad omnem finem*; it is in *Anglie*, *non per terram quam per equos, ad omnem finem*.

This helps Merchant-Strangers in this particular, because before that they could come but at four times in the year, and now they have forty days at a time; as my Lord Coke observes in his Comment upon that Statute, and cites the *Statute of Taylor* for it. And if the Law gives any thing relating to this question, it is, that before that Act, Merchants could not go out of the Kingdom, and shall they may be prohibited publicly; which, tho' my Lord Coke says must be by Act of Parliament, yet he cites no Law for this opinion; and with submission, no word Publick doth not necessarily import that it should be by Act of Parliament. My Lord, that Law that comes nearest in words to this case here-into you, is that of a *E. III.* which is pleaded by the Defendant, that is part of the Act, the latter clause of it, that the Sea be open to all manner of Merchants, to pass with their merchandise whither they please.

This is part of that Law; but, my Lord, the meaning of this Law is quite and clear another thing, as I shall shew with submission most plainly; and I will beg leave, my Lord, a little to introduce it, by giving you a History of this Law, how it comes to be made; for it is but a short one, and 'tis only the last clause of it that is pleaded by the Defendant. By the Statute of the *13th of Edw. III.* it was made felony to transport *Wool*, and this my Lord Coke observes in his Comment upon *Mogea Charta*, upon *chap. 30.* King *Edw. III.* took advantage of it, for excluding mercy of the Merchants, for dispensations with the Law, and for licences for transporting of *Wool*. Hereupon several complaints were made in the Parliament, and particularly, in the *13th year of Edw. III. Parl. 1. cap. 28.* the Commons complain, that the Grant of such a licence by a *Back of Wool* made by the Merchants only was not to bind the Commons, and therefore pray it may be revoked. The King answered, This cannot bind to charge the Commons; for that there was let a certain price upon *Wool* to every County, which the King would should stand; and that all *Wool* sold under that price should be forfeited in the hands of the buyer.

This was in *17 E. III.* and this matter, my Lord, among other things, was represented to the same Parliament, by the same Merchants, by way of advice, as a thing fit, *17 E. III. in duple* *cap. 58.* of the Parliament-Rolls of that year. And they set forth, Whereas they were summoned to *Warrington*, to inform the price of *Wool*, which they did not, regarding the times to come as they lay, and that was abused, they pray liberty to buy *Wool* as freely as any merchants, and as they can agree between buyer and seller; and that all Indemnities and Proceedings contrary to this Law might be stayed; and further they add their advice, that the King would send in the Staple in some place in *England*, rather than beyond the seas.

Then comes the *18 E. III. Parl. 1. cap. 12.* among other Petitions of the Commons, there are three which refer to the first part of the Act of Parliament. That the prices set upon the form of *Wool* in every County, which run more to the damage than advantage of the people, might be pulled, and that every one may buy freely, as he can agree with the seller, and none be accused for doing the contrary.

This, my Lord, explains the first part of that Act of Parliament; that the ordinances before this time made upon taking forms of *Wool*, which was printed in *Rolls*, and all the Statute-Books; (for the *Roll* is, *per prius*) and declared, and that every man, as well Stranger as *Danish*, might purchase *Wool* as he can agree with the seller, as they were used to do before the said ordinances.

Now, my Lord, you shall see the latter part of the Act, which is that they plead, among the Petitions of the Commons in the said Roll, there the 5th Petition is, reciting, *That whereas the King had granted to them of Flanders, that the Staple for Wool should be held at Bruges*; at the time of which Grant, all manner of Merchants, that is, *Lombards*, *Greeks*, *Catalunians*, *Spaniards*, and others, who used to buy the greatest part of the *Wool*, and carry them out of *Flanders* by land and sea, where they would, to the great profit and increase of the price of *Wool*, rather coming yet the Towns of *Bruges*, *Gent*, and *Ypres*, have late obtained,

That

That no wools coming to the Staple, be sold to strangers, nor carried out of the said Country of *Flouder*, as they used to be, to the damage of the merchants of *England*, and of all the commonalty; and therefore they pray remedy hereof.

I am informed by the King, that they may buy wool as they were wont to do; and that a Writ should be sent to the Sheriff to make Proclamacion accordingly. Then they pray, that the effect of these answers may be put into writing, in the manner of a Patent under the Great Seal, and this is done, in which there is this very Statute of 18 E. III. in *verbum*, as it is printed. And this plainly shows, that the Sea being to be open, and Merchants to pass wherever they please, was only in answer to their petition and representations, and to redress the mischief; that they might buy here, and go where they would, and not be necessitated to go and buy at the Staple; which was to be abused by those of *Bruges*: And this is likewise pursuant to the advice and petitions of Merchants before the 17th E. III. That the King would establish a Staple somewhere in *England*, and not in parts beyond the Sea.

My Lord, for the rest of the Acts of Parliament that have been cited on the other side, I shall not enter upon them particularly; but this every body at the first sight may see, they carry their own answer along with them, and the occasion of their making does appear in themselves, that they did not, and very few of them come up to this Question now before us, or of any thing like it, as will appear plainly upon the bare reading of them.

The only Question then, my Lord, that remains, is, whether the action lies for the Company? For I think I have made it out, that the King had such a prerogative at Common Law, and so Act of Parliament hath taken it away. I then I say, the Question is, Whether an action lies for the Company; that is, whether it be a bare licence, or coupled with an Interest? And as to that point, I shall be very short, for to me it seems to be no Question at all. For,

First, They are at a great charge and expence to support this trade, and therefore surely they ought to profit by it.

Secondly, They are looked upon by the Parliament to have an interest in this trade, or else they had never been raised to high as twenty Shillings for every 100 l. in their Stock. Then if they have an interest in the trade, this trading of the defendant is an encroachment upon that interest, and then here is *domestice & against*, which will suffice them to an action.

For so it is in other things: A Fair, in some towns, is but a licence to hold a market at such a time, in such a place; but because of the profit that tends to this liberty, and the charge that the party is at in keeping of it, an action does lie against any Man that sets up another Fair, to the prejudice of him that had the full Grant.

In the common case of Patents to new inventions, an action lies for using the invention without licence, because of the interest conveyed by the Grant, and the charge that the party that invents, is at. So that I think, my Lord, with submission, we have here an interest in this trade; and an interest, I say, as well as a licence, well founded upon the King's Letters Patent; which the King had power to make by prerogative at the Common Law; and that power not restrained by any Act of Parliament. And therefore I humbly pray your judgment for the Plaintiffs.

Mr. Pollexfen, (afterwards Lord Chief Justice) his Arguments.

De Terra Petito. Ante Regni Regis Caroli Secundi XXXVI. Die Lunæ XII. Aprilis, Anno Dom. 1684. Bene Regis. The East-India Company against Thomas Sandys.

Mr. Pollexfen.

MAY it please your Lordship, the Governor and Company of Merchants of *London*, trading to the *East-India*, they are plaintiffs, and Thomas Sandys is the defendant. If your Lordship please, I will open a little more of the Record than has yet been opened: And the Case upon the Record stands thus:

The plaintiffs bring their action against the defendant, and do declare, That the King by his Letters Patent, in the 13th year of his reign, did grant to them the sole trade, between the Cape of Good Hope and the brightness of *Madagascari*, in the *East-India*. And did also grant unto them, that they, and nobody else, should come thither, nor trade there; and they do say, the defendant did come thither, and did trade; and that this is to the plaintiffs damage.

This defendant has prayed *Oyer* of the Letters Patent; and there are some things that are not mentioned in the Declaration: but not being upon the Record, and appearing upon the *Oyer*, I crave leave to open them, that I may make use of them in the discourse I am to make; and I desire your Lordship would please to take notice of them.

In the Letters Patent, when they come to the Prohibition and Restraint, the Prohibition and Restraint is in this manner, which they have set out in their declaration. The Letters Patent do prohibit the trading without a licence, upon pain that every such person that shall trade to or from the *East-India*, shall answer the forfeiture of his merchandise, and also of the Ship; one moiety to the King, and the other moiety to the *East-India* Company.

And then there follows another clause, which is omitted all out of the Declaration; and that is a clause of Grant to the Company, that for any consideration of benefit to their own use, they may grant licence to strangers or others, to trade to and from the *East-India*.

And then there is another clause that is omitted also, and that is this, That the King grants to the Company, that the King will not, without consent of the Company, give licence to any persons besides the Company to trade thither.

And there is likewise another clause which I would take notice of, That nobody of the Company should have a vote in the Company, unless he have a stock of 500 l.

These clauses now being in the Letters Patent, and the Letters Patent being set forth upon the Record, they are become parts of the Case. The defendant has pleaded the Statute of 18 E. III. and thereupon there is a demurrer.

My Lord, the Questions that are in the Case are only these two:

4

First, Whether or no this Grant of the sole trade to the plaintiffs, be a good grant or not? And next,

Secondly, Supposing it should be a good Grant, Whether or no the plaintiffs can maintain this action, as now it is brought?

My Lord, in the argument of this Case divers Things have been said in which I shall differ from the other side, but only take notice how far they may be of force in point of argument, to make the Questions that are in the Case to turn, as to the Law, one way or other.

My Lord, it is no Question but that the King, by Law, can restrain any of his subjects from going out of the Kingdom: For the King hath a particular interest in the services of his subjects; and therefore it is most reasonable and an undoubted Rule, I think, in the Law, that the King may restrain any particular subject *pro his re nata*, as the King takes it to be most necessary and convenient for his service to restrain.

Next, my Lord, I do not deny, but think it also to be a Law, That the King may restrain all his subjects from a trade to such a particular Country or City, upon some reason or occasion; as in times of war, and times of plague, that I need not the Question in our Case, for the Law is, that the King may restrain any of his subjects from going out of the Kingdom: For the King hath a particular interest in the services of his subjects; and therefore it is most reasonable and an undoubted Rule, I think, in the Law, that the King may restrain any particular subject *pro his re nata*, as the King takes it to be most necessary and convenient for his service to restrain.

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Then,

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There are three things that I think are important, that they are to the opposition or to the King's party, and I think, that has known any thing of late years about the opposition, that knows their dealings with, and handling of their affairs are friends, that get any thing in the way, as; and other people in their employ, will find influence enough in the opposition; and that will be enough to satisfy any man, what kind of people they are: for what a work is there, when they have any thing to forward, or any body else that has got any thing in their favor? If their things moved are not upon the Record, but they are consequences, that are visible to every body; and the truth of it, in all Patents for sole trade, to it will be. So that if the evils and mischiefs, which the Common Law forbids, and endeavours to prevent, by judging all Monopolies, Infringings and sole Trade unlawful, be to be avoided, the evils and mischiefs attending these Patents and sole Trades are perhaps the greater, because

My Trade is the greatest that ever England knew.

My Lord, in *Faustberg's Nature-Brevium*, 222, there is this fable, and I give it for this reason, because if to be selfish are consequences or a sole virtue, it cannot be denied but she is offenders of all the King's people. Now there is no law, that every Grant of the King has a condition implied in it, *Quod Patet per Divisionem in magis fidei interfecti per gratiam*, to the Book of 23 d. IV. 14. Grant is *Key*, to the charge of justice of the *Subj.* 13; and therefore the King is deceived in this Grant; and the Grant is as well by the Common Law, as all their ancient Statutes, void.

City. Ay, but say they, this is not a Patent granted to the advantage of a few, or for the raising of the prizes and monopolizing of commodities, but for good government and order, and the preservation of this trade, that otherwise would be destroyed; and say they, there have been such Citizens as contribute to Turkey, Barbary, and other places.

Rep. It is true, my Lord, this is said; but that Patent does say, that it is for good order and government, and that the Advantage, concerning the Friends and Neighbors, is not set out in our Books. The Corporation raising, both the parts and at hand, the said Patent, the fair pretence of order and government, is in conclusion true to the hindrance of trade and traffick, and to the retail produce Monopolies. This is an old observation, for in the sixth Rep. 88. 5. in the end of the tale of Monopolies, there are these words: *Privilegia quæ sunt contra Privilegia, Rip. magis tamen Privilegia contra Privilegia, id est publicum pretorium, quam bene de legibus Constituta, sed præsertim tunc ab eis abest voluntas.* Those are the words of that Book; and there it is also said matter of, that Dary's Patent had a much plausible and Specious preamble, for there is mention'd, that the Subjects might exercise themselves in husbandry and lawful employments, and that Card-making had made Cards-playing more frequent, and principally among Servants and Apprentices, and therefore the sale mixing, and trade of Cards-selling, was granted to Dary. Otherwise, says the Book, what a glorious pretext and preamble this odious Monopoly had.

There is the copy of *Henry and Wyn*, MS. B. 2. 10, Cor. 11. Rat. 423. A Patent made three years after the Patent given to the Company, and in imitation thereof, the Patent in to the Gewery Company, and recites, that the trade to the Gewery was of great advantage to the King's subjects at that time; and by reason of so much excess in trading of subjects there, our most christianities were decreased in their value; so that the King's subjects were forced to carry Silver there to get Wines; and all this happened for want of regulation and good government, and therefore the Patent did constitute Sir Arthur Ingram, and about fifty private men by name. And all this, that the said Company should have power to carry out, for the space of twelve years, should be the Company and Body politic, to consist by and by of twelve men, should be a Governor and Body politic, to consist by and by of twelve men; that there should be a Governor, a Deputy Governor, and twelve Aldermen, and names them, but to be continued by elections; and should have the sole trade to these Islands; that no other flor'd or haunc or vice these Islands, and prohibits all others under pain of forfeiture and imprisonment; and indeed follows very much the frame of this Patent, with a non-alienage to the Statute of Monopolies. But notwithstanding this glorious preamble, this Patent was soon afterwards condemn'd, both in this Court, and afterwards in the Parliament for the abuse of trade, and of regulation; for the general good, in that the thing that is prohibited to all other men is, that they shall not interfere with that; and so now I can't but think, what is the real intention of this Patent under the name of regulation and government: to ingross all the trade of the town or two town into so small excellent regulation and government.

My Lord, as to the other Companies and Charters that have been granted, supposing that all such Grants were such as this, and used and practised as this is, it is no argument that they are legal, or that this was good. For, my Lord, it is well known, both by the ancient Statutes that I have cited, and by common experience, that there have been in all ages and times Patents granted, that were not by Law grantable, but the King was deprived in them, and those Patents were void and of no force; and therefore it is no argument, because there have been many such Grants and Patents in former times, that this should be good.

I agree, my Lord, if ever this Grant, or any Grant like this, had come in question, and had receiv'd any judicial allowance to be good, it had been something; but otherwise it can be no inference at all, because there are others this is a good one.

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Secondly, I was they and further, and provided against, those that would be.

The *Proviso in the Statute of 1834* *Chapter 1, § 1, § 9* shows also that Monopolies were granted, but for a certain time, from receiving any allowance or appropriation, that that Grant that was made in the end of her reign, for confirmation of the Queen's Grants by a special Privilege, does except and provide that it should not extend to make good any Letters Patent that did concern any balance, powers or privileges, commonly called Monopolies.

The nature of Monopolies and this Statute sufficiently show, that there were such Grants, and that there were not allowed, as it is seen in Queen Elizabeth's time, and during a reign, divers such Grants it found had been made. But, say a Lord, if it be there had never been any judicial allowance in times past for any sole trade, or sole buying or selling, that there have been in all times such Grants made, yet this will be an argument that they were good, but on the contrary, and further the practices of these Companies have been to the contrary, not within late years; so sole trade profitable cannot there.

But, my Lord, the country, since that Patents have been so granted, since that there is an artificial increase of such, I would appeal to those to show whether this has been any prejudice of such things. I do not suppose, but that in *Turkey* and *Bergerie*, artificers have tried to do what have been denieth by the Companies, and that consequently all times, but yet I think nobody will and any judicial opinion that has been given against them to us, or that ever any such Patent was of force, to restrain the felicitous Freedom of trade in those places.

My Lord, I must so think, that the Grants to those Companies, that is, the *Tortly-Company*, the *Barbary Company*, and the *Anglo-Company*, are like to this of the *Inde*; but yet if it never has been published to the other others in this manner, it is rather an argument against them of the other side; but they have nevertheless thus, nor all the clause of prohibition as there men do. For, my Lord, whoever thinks to make any conclusion for the privation of such a sole trade by a Company, with a restraint of others, because such Patents and Charters have been granted to other men, will have, and little reason to do so, if he consider what a difference there is betwixt a sole trade and these sorts, for my Lord, these Companies do not ever let up for a little while, and therefore, such sole trades in the Patents, they never sold them, but have always sold them in the Country, and in another method in a commendable way, and I think in a legal way; but not so as to warrant any thing of this, that is here pretended. Therefore if your Lordship pleads to give me leave, I would observe the difference between the way of trading, that those other Companies have, and the trade of the *Engl-Inde Company*. The *Company of Tortly, Barbary, Angla, Malabar and Humbergh*, nor any other, till of late years, did ever trade with a Joint-Stock; but the Members of the said Companies, every man find out his own trade, bought and sold his own commodities, and did come to the said Companies, and the Companies took some care to send out a Consul, or factor, to the said Countries, to procure the trade, and by small imposts upon the commodities were made to pay for such Officers, which imposts or Allowances were made by By-Laws and Regulations among themselves. They take care the Markets shall not be over-clogged by the Commodities they find out, which they also by their own Orders and By-Laws that are made among themselves, they only order what Ships shall go, but leave the particular Members of the Company, every man to find what he will upon his own account, and, as appears to me, will to be his factor, and to bring over what commodity he desires to sell, and to buy what he desires to buy of the Body-Politic. If you do not say any Joint-Stock, or the Stock of the Body-Politic. If you do with say, that the said Members, the particular person you have to deal with, is a man is intended to be a Joint-Stock, that has a mind, paying him small fees of money for his freedom; and whoever is of the Company, has a Vote in ordering the affairs of the Company. But now you of the *Engl-Inde Company* import the sole trade into the Body-Politic; you have a Joint-Stock, every man whether Merchant or not, if he can buy such a share in their Stock, is of their Company. The Company receive money, and the rest must submit to their sale and distribution: those few of them which have the most shares, have the more say in the Company, and the Members make, buy or sell, or have any thing that be calls his own, but they have a share in the Stock; you suffer not the Members to trade with their own money, but by a discrimination, or to employ whom they please, thus you do more, you suffer men to have a Vote among you (and your Letters Patent have such a clause that none shall) but he who buys Stock, which goes, no man can give more, unless he pays 10*l*. or 20*l*. for it, two and a half per Cent or some great sum. So that by the very foundation, they can have no more power in their Company, than they that have good shares; and their shares being ingrafted into few hands, they have all, and call themselves the Company, and therefore they will not be deceived by words, but distinguish things different one from another, by their strength between one Company and Society, and another, and by the strength of the law.

The *Family Company*, and the still less it, may be truly said to be Managers, Regulators and Improvers of Trade. They have no Joint-Stock that they trade upon, they invest not, they admit every man that will to be free of their Company, to trade with his own money, his own credit, and buy and sell his own, and to employ when he pleases: and none among them, under pretence of government, regulation and preferation of trade, makes unreasonable advantages.

But this terrible *Lepid-India* Merchant, the Body-Pol tick, covers and countenances some few men among them to ingross, buy and sell at their own rates, and thus exclude all others for the great and excessive advantages of the few.

The other Companies, as the *Turky Company*, &c. have not any sole buying or selling, as is counting any sole trade or monopoly.

Every Member of these Companies, which are a multitude, and every one that is not a Member, as it will be, be a Merchant, and no man is excluded.

But the Company is a sole contrary, and therefore (if ever any was) are great Injurers and Monopolizers of trade. I do not argue nor speak against Companies, nor regulating, nor managing trade, which was the true intent of the Patent; but as I have mentioned, and it virtuously and commendably practised in the great Companies of *Turky*, *Mafow*, *Holland*, and others, where the Members of the Companies trade upon their own particular Stock and Estates, and no Merchant hindered or denied to be a Member, that defect it, paying its ordinary fee of admission: but against the invisible Merchant, this pollicit capacity trading in Joint-Stock.

Suppose a private Patent to any one, or two, or three men, Farmers or Partners in their private capacity of this sole trade, and they had the management of it, and becomers possessors of such vast wealth and merchandise:

What would this Pollicit Body (I mean the principal Members, for the Body cannot think or have sense) judge of this?

Perhaps yours is much wiser; there a man should know with whom he deals, who were his debtors, and how to come at them; but dealing with you is a kind of dealing with spirits, an invisible body, only fulfilling in *Antidote's* Logic.

Therefore being to unlike the other Companies, and so contrary to them, you have no countenance from them; but though they are good and commendable, you are Injurers and Monopolizers.

This shows the great and vast difference between the one and the other; thus shows that you, that are the *East-India* Company, have this sole trade as a Company, and wherever buys in many Stocks, has as many votes as he has good in the Stock.

There is no such thing in any other Company, but quite otherwise in all their respects; but hereby it comes to pass, that he that has in many shares in the Stock, has an absolute power, by having so many votes.

The invisible Body or Corporation perhaps trade for 2,000,000 *per Ann.* they get into their hands to sell for 800,000 worth of merchandise at a time; therefore sell-fables they made came to 2,800,000, if many hath these commodities but they. Is this trading, and so ingrossing or monopolizing? Is it their wonderful virtue then, hatred and contempt of riches, that makes them not to raise and increase values as prices, and be as rich as they please, if they do not do it. Never saw there such an influence of so great trade in England, but none of your Members buy or trade at all, any man among you, whether he be Merchant or not Merchant, Citizen or Gentleman, or what he will, if he has a Stock, his Stock goes on by his joint-trade; and it is a few men that manage the whole as they see best, no man employs ships or workmen as he thinks most convenient; but you are one great trader in this vast trade, which is indeed one quarter part of the trade of the whole World.

My Lord, this being then the great difference between this trade by a Joint-Stock, and in the Company as a Body Pollicit, which is but as one entire person, having the trade entire to himself, and the trade of particular Members, under orderly regulation.

It is quite a different and different thing from any thing, in any of the other Companies, that they would be blamed unto to sustain their own ends; nor is there any reason to make them like one another, for the whole matter is carried on different in both; the one is a sole trade by a Body Pollicit, the other dispersed through the Members, according to their own discretion and occasion, under regulation. No man, if he comes into the *East-India* Company, can trade among you, or vote among you, unless he have good Stock; and if he do not come in, (since it is according to your constitution, that every man should have as many votes as he has good) his vote is like to do him little good, if some few men in the Company agree against it.

And besides this, my Lord, in the *Turky* Company, where they trade by divided Members, every man knows his credit and his debtors, because they deal in their natural capacities, but you trading in capacity of a Body Pollicit, every man that trades with you has a creditor or a debtor, he knows not whom.

And it is a great mischief, when persons know not how to far or how to deal with them; for take them all apart, they are as soft and as good people to deal with, as can be; but take them together as a body, what more hard to deal with than a Corporation?

My Lord, we have seen the instance of these things in this Company, in a few days they having got great power, that none could contend with them, and then after to dissolve, as well as that no Dan can find to them. This we all know very well, my Lord; and the influence in this to show, that whereas they would be liable to give to Companies, which were created for the preservation and benefit of trade; and the Members of it are under the regulation and government of the Company, but not as you are, they are traders, your Members are none, you are only the Body Pollicit, the invisible Merchant, that no one knows where to find; and a Body Pollicit, in judgment of Law, has neither Soul nor Conscience, and yet forthwith are traders.

I only instance in these things, to show that signifies nothing which you did intend upon, that there are other Companies for trade; for I say, that they are good and regular, and not Monopolizers, for they do not trade in such a manner by sole buying and selling, but every one trades as a particular Merchant; but you are otherwise, your Body Pollicit is the sole Merchant, and none of your Members can trade, unless a particular servant, perhaps to face charges, give him leave to buy or deal in some little things, but all others are quite excluded.

My Lord, having thus showed you the way of their trade in sole buying and sole selling, I shall now, in the next place, come to the Statute of Monopolies, which is the Statute of a King *Tenth*, chap. 3. and I hope I shall please you, that they are within the words and meaning of that Statute.

By that Statute, my Lord, it is enacted, that all Monopolies, Commissions, Grants, Licences, Charters and Letters Patent granted, or so to be granted to any particular persons, Bodies Pollicit or Corporate, or for the sole buying, selling, making, working, or using of any thing within this Realm; and all Proclamations, Injunctions, Restraints, War-

rants of Affiliance; and all other matters and things whatsoever, tending to the inhibiting, erecting, strengthening, furthering, or countenancing the same contrary to the Law of this Realm, are and shall be utterly void and of none effect.

And that all Persons, Bodies Pollicit and Corporate, which now use, or hereafter shall use, shall stand and be disabled to have, use, exercise, or put in use any Monopoly, or such Commission, Grant, Licence, Charter, Letters Patent, Proclamations, Injunctions, Restraints or other matter, or thing tending as aforesaid; or any liberty, power or faculty, grounded or pretended to be grounded upon them.

Then, my Lord, there follows the clause of forfeiture of treble damages to the party grieved, by the using of any such Monopoly; thus comes the clause about new Inventions and some other things; then comes the *Proviso* concerning Corporations, of which I have been made in this title, I shall have leave to consider it distinctly.

Provided also, and it is hereby enacted, that this Act, or any thing therein contained, shall not in any wise extend or be prejudicial to the City of London, or any Corporation, Company or Fellowship of any Art, Trade, Occupation or Mystery, or to any Companies or Societies of Merchants, within the Realm, erected for the maintenance, enlarging, or ordering of any trade or merchandise; but that the same Charters, Corporations, Companies, Fellowships and Societies, and their Liberties, Privileges, Powers and Immunities shall be and continue of like force and effect, as they were before the making of this Act, and so other, any thing in this Act to the contrary notwithstanding.

The next *Proviso* extends to Patents granted, or to be granted for Printing, making of Salt-Petre, and Offices, which do not concern the public quality.

By the definition of a Monopoly, which I have before, out of my Lord Coke, stated and explicated, this sole trade granted to you, and the exclusion of all others, is a Monopoly within that definition, as I have before shown that their Charter is directly contrary to this Act. My Lord, first, that they are within the enacting clause of this Act, then, I think, by comparing what they claim with the enacting clause, will plainly appear. I need not now stand so much upon the word Monopoly, whether by what I have said, I have proved them a Monopoly or no; but by the other words of the Statute, supposing that word Monopoly was out of the Act, yet they are within it: for the Act of Parliament having the words of sole selling, or sole buying, or sole using of any thing, if they have the sole buying or sole selling, or sole using of this trade, then they are most plainly, I think, within the enacting words of this Act of Parliament.

Now, my Lord, that their Charter is directly contrary to the enacting words, I must also therein refer myself to the words of the Charter, which has sole buying; for all others are prohibited so much to come and go from and to the *East-India* without their licence. It has also sole selling; for all others are prohibited to import any commodity from thence into the Realm; and they cannot sell them, except they import them. They have likewise the sole using; for they have granted to them the sole trade, which includes all buying, selling, sole using, that appropriates all to themselves, and excludes all others.

Now then, my Lord, can any man read the Act of Parliament and their Charter, and compare them together, but he must at the same time conclude, that their Charter is contrary to what is enacted therein: for the Act of Parliament does say, "That all Letters Patent granted to any Person, or Body Pollicit, for the sole buying, sole selling, or sole using any thing, and all Proclamations, Restraints and Injunctions to the contrary, and all other matters and things touching themselves, are contrary to law, and utterly void, and of none effect, why then they have by their Grant, the sole buying, sole selling, and sole using of this trade; therefore they are quite contrary to what is in the enacting words of this Act of Parliament." Then, my Lord, if they are contrary to the enacting clause of the Act, then their hopes must be, that they are saved by the *Proviso*.

My Lord Coke, in his Comment upon this Act, in 3 *Inst.* lib. 2. does say this Act is forcibly and vehemently penned for the suppression of all Monopolies; and the word sole usage, is there said to be in general, so no Monopoly can be raised but will be within the reach of this Statute.

The word, any thing, shows also the general scope and intent, that nothing should be excluded that was a Monopoly. For Monopolies, in times past, were ever without Law, but never without friends. And if it be proved for the suppression of all, it ought to have a large and general conclusion.

Obj. But then let us see whether they are in theaving of this *Proviso*. The *Proviso* does not extend to any Corporation or Societies of Merchants within this Realm, erected for the maintenance, enlargement, or ordering of trade or merchandise.

Ans. This *Proviso* extends not to this Charter, or any Letters Patent that were not at the time of the making of this Act; and that is the first thing that I offer, why they are not within the reach of the *Proviso*. Because this *Proviso* does not extend to any Letters Patent after the Act of Parliament made, but only the Letters Patent before. For the *Proviso* says, *It shall not extend, or be prejudicial to any Town Corporate*, concerning any Charter granted to them, *Libs.* or Customs used by them, or to Societies erected for the maintenance, enlargement or ordering any trade or merchandise. This does extend to those that were granted or erected at the time of the making of the Act; and there are no words of saving, for what should hereafter be erected. And the word hereafter would as well have been in the clause of saving, as in the enacting clause, if it had been inserted. But the following words, concluding this *Proviso*, show it further; for the *Proviso* goes on, and says, That the same Charters, Customs, Corporations, Fellowships and Societies, and their Liberties, &c. shall be and continue of like force and effect, as they were before the making of this Act, and no other. This shows, that that which is within the *Proviso*, was that which was before the making of the Act only; and this governs and concludes the whole *Proviso*. Now that only extending to those that then were, and to leave them as they were, because these Charters and Companies, their Powers and Privileges, in the same time and condition as they were before the Act, can never have any assistance to what should be after.

So, my Lord, taking it upon what I have said, I do hope that the words of the Act shall plainly be carried to bodies politic, and to inhibit the ingrossing trade by bodies politic. Their say themselves, and it appears they are a body politic, and they have this sole trade; and so the standing clause extends to them.

Next, I say, the *Privilege* extends to Charters granted before, not to Charters to be granted after the Act of Parliament: and as to those Charters that are excepted, it leaves them just as they were before; but if their statute takes place, then it is, in a collective, with subordination, most palpably contradictory and repugnant to the Act; and then it is as lawful as this to grant to any Corporation any sole trade or manufacture, yes, down-right to grant them a Monopoly, as it is to make any other Grant; and so this would be rather a countenance, than an Act made against them.

But then, my Lord, they come to another thing; this is an Infidel Country, this is a sole trade with Infidels, and such a trade the subjects never had any right to have without the King's licence; and now being *free*, that defrauds the King; and to prove it, they cite *Archbold's Case*, in 2 *Brom.* 296. wherein Mr. *Bromley* being Prothonotary, recites what my Lord said in that Case, That no subject might trade into Infidel Countries without the King's licence; and his reason was, because he might relinquish the Catholic faith, and adhere to Infidelity: and that he had been a licence in the time of *Ed. III.* wherein the King recites the confidence that he had in his subject, that he would not recede his Religion, and licenced him; and that this did sit upon the recital of a licence made in trade to the *East-Indies*.

And they do cite *Cala's Case*, in 2 *Rep.* 67. p. 17. wherein it is said, That Infidels are, in law, *perpetui inimici*, and between them and Christians there is perpetual hostility, there can be no peace; and 12 *H. VIII.* fol. 4. where it is holden, that a Pagan cannot have or maintain any action at all, nor have any thing within this Realm; and to prove this, *Regis* 281. and 12 *H. VIII.* fol. 4. are there cited.

My Lord, I have the more fully noted what this is, because I hope I shall give very full answers to it: But, my Lord, before I do answer these Books;

First, Let us for what the consequence of it will be: Supposing the Law to be as these Books say, and as these Gentlemen would have it, and the consequence will be, that the plaintiffs cannot maintain their action, but the Charters granted to them will be void.

Next, Upon the reasons given in these Books; for if the Books are of authority, the reasons there given must be of authority (says that Book of *Bromley's*). The King has the care and preservation of Religion, by the Law vested and reposed in him, that the subject should not trade with Infidels without licence, then they may use violence their faith; and the King will take care to give licence to traffick, to such only as he can have confidence will never waver from their profession.

Supposing this to be true, then these Patent must be sought; for then it is only granted to persons in whom such confidence may be. My Lord, then let us how this will stand with their Charter. Their corporation and body politic is indefinite, as is persons; and the members changed continually; some fall their stocks, and go out, or die; others buy their stocks, and come in that way to be members of the company, or as successors to those that die, and many new members are every year. I doubt they do not much examine, or take care to be satisfied, how fixed these are in their Religion they daily take in; and how then can there be confidence in a body politic, which the law says has another soul nor confidence? What confidence can be reposed in such a person whose Religion?

Secondly, Besides, it is not only the members of the Company, that at the time of the incorporation were incorporated, and their successors, that at that time lived; but their sons and apprentices, their fathers and servants have licence by this Patent to trade there; and what security can there be, that such may not (by conversing with Infidels) change their Religion? If this Licence be a truth and prerogative in the King, to be given to such persons in whom the King can have confidence, that they will not, by converse with Infidels, change or prejudice their religion, &c. this cannot be granted to a body politic and their successors, which may have continuance for ever; and to their sons, fathers, apprentices and servants, persons altogether unknown, not born, nor to come away when these Letters Patent were made.

Suppose such a licence to you, to trade with enemies, and supposing that the Law has established such a power and prerogative in the King, in the prerogative of religious licence; the King cannot grant this prerogative to you of the *East-Indies* Company, that you should have a power to grant licences to whom you will: yet all this is done by your Patent; for you have thereby power granted you for your sons, apprentices, fathers and servants, which are persons that you yourselves nominate and appoint at your discretions, and undoubtedly very religious, and others that you bring into your Company.

Next, besides this power that you have expressed for those that are your apprentices, &c. which are at your discretion, to make whom you please; there is another express clause, That the Company for any consideration, or benefit to themselves, may grant licence to any servant, stranger or other, to use this trade. So the more they desire what the meaning was at the word *Consideration*, by adding the Words, or benefit to themselves, and that the King, without consent of the Company, will not grant licence to any other to trade there.

Can this then be a good Grant? Can the King grant from himself his kindly care, and the trust in him reposed for the care of Religion to you, to manage it as you will, and that he will not use it himself without your consent? Surely, you cannot say so. So that supposing by law there is such a trust reposed in the King for preservation of religion, as you would have, to give licence to his subjects to trade with Infidels; and that none without his licence can do it: yet this grant to you will be void in itself, and then you have no more right than we, and can maintain no action against us.

But thus a little to consider the authorities upon which this great matter relies, to prove this religious point or piece of law.

First, That Book of *Bromley*, is a Book that was printed in the last time, and not licenced by any Judge or Parson whatsoever; but truly I have got a copy, and a note of the Roll of the Case there reported, and Vol. VII.

It is this, *Archb.* v. *Reg.* B. C. R. c. 350. *Mich.* 1679. against *Archb.*; it is in a production, setting forth, That the King had granted to the plaintiffs his commission to go with their fleet to the *Indies*, to spoil and suppress the Infidels, and to take from them what he could; that the plaintiffs, in the *Prohibition*, having this commission from the King, did enter into Articles with the defendant, to give him a share of what he should get in the adventure; and thereupon there was a bill in the Admiralty by the defendant, against the plaintiffs, and he comes and moves for a *Prohibition*, suggesting that the articles were made upon the lady and not upon the high sea; and to the Court had no jurisdiction. Now upon the debate of this Case, it did appear, there was a kind of Letters of mart, a commission from the King, in a warlike manner to spoil the Infidels, and get what he could from them. But now, how this would come in debate to make a restriction about the business of trade, I do not know; probably it might be as it there related; but what is on the Blood is only an occasional saying of my Lord *Cra.* upon the motion for this prohibition. So that a man that will lay any great stress upon such an authority, will be mighty willing, for it is only an occasional saying, and nothing relating to what was there brought in judgment, which was about a commission to take away goods, perhaps from enemies, by Letters of mart, not about trade; and so I hope there is no great matter in that Report.

The next Case, my Lord, is that of *Cabot*, where it is said, that an Infidel is *perpetui inimicus*, can maintain no action, or have any thing; and that there is perpetual hostilities between Christians and such, and no peace can be made with them.

My Lord, 'tis true, that this is said in *Cabot's* case, but I must also say, as there was no occasion in the former Report for saying of that, so more is there in *Cabot's* case for saying of this; for it made nothing to the matter as question about the *Prerogative*, or were they any wife led to it, in the debate of that case; there was nothing there in judgment that gave occasion for it, so that I cannot think it was much considered of before it was spoken.

The Books that are there cited, I have looked upon, to see if they would prove any such thing as they are there cited for, and I think they do not by any means.

There is one in the Register 281. and that is I find there is, that in a writ of *prohibition* granted to the Prior and Brethren of the Hospital of St. John at *Jerusalem*, and their agents, it is said, That that Hospital was founded in defence of Holy Church, against the enemies of Christ and Christians; but truly, how to conclude out of that Book this, that Infidels should not have any property in trade, or be *perpetui inimici*, upon whom no peace can be had, I know not, or that *Cra.* mentions us when.

Then 12 *H. VIII.* fol. 4. they also cited, that it only this, The original call in an action of trespass for beating his servants, taking away his dogs called a blood-hound: And there it is said, If a Lord beat his villain, or an husband beat his wife, or a man beat one out-land, or a waiter, or a Page; they shall have no action, because they are not able to sue an action; I must needs say, this comes in very oddly from a digress to a Page, and there is nothing to lead to it in all *Cra.* case, that I can see, and yet this is all the authority that is cited in *Cabot's* case, to prove that they can have no action. So that all that a man can make of this is only discourse, and sudden thoughts and opinions, and sayings of Counsel, nothing of debate or judgment in the case.

It is true, my Lord, the Christian Religion and Papists are so contrary to one another, that it is impossible they should be reconciled any more than contradictions can be reconciled; but because the religious cannot be reconciled, that therefore there should be a partition-wall between us, as to property and commerce, perhaps *as doctrine* as irrelevant as can be; and the desire for all means of coming to concord and reduce them to the faith. But now, besides their extraordinary and occasional sayings in these Books cited, which are of little authority, I cannot find any Books or Cases, much less judgment or authority, for such opinions in to great a point as this is: but on the other side, if a man considers the general cause and practice of trade and commerce, and legal proceedings in all times and ages, one would think my Lord *Cra.* could not be in earnest in what he has said in *Cabot's* case about Infidels. Let a man consider what a great part of the world we have commerce with are Infidels, at this day, as the *Turks*, the *Portugals*, the *Morrs*; and other places in *Spain* and *Portugal* were possessed by the *Moor*, who were Infidels, till about 300 years since: for till the year 1492, the *Moor* had possession of both the *Spain* and the *Portugal* for the space of near 800 years, and have us now always had trading with all those? Have we not leagues and treaties with the Princes of Infidel Countries? Do we not receive Ambassadors from them, and send Ambassadors to them, and Ministers trading with them? Have we not, from time to time, and this is all times and ages, and that is *Q. Elizabeth's* time, in the best and most religious time, for many hundred years? Have we not likewise war and peace with them, in like manner as with Christian Kings and Countries?

And let a man consider the consequences of this doctrine. If they are *perpetui inimici*, then we may justly killing of them, as those we are in hostility with, whatsoever we meet them, and justify the taking away what they have from them, as 17 *E. IV.* fol. 13. 14. it is adjudged, that a man may first take and kill his own goods, and the goods of an Infidel, whenever he can find them; for it is the price of his adventure to take them, and of his victory over his enemy, if he have taken him. And 2 *H. VII.* fol. 15. if an Infidel be an alien enemy, then any man may take away the goods of an Infidel, and have them to his own use; and this would be a good trade, if this be so; any man may kill and beat him, if this be so.

Archb. *Prohibitor*, in his argument, was pleased to use many ancient Rolls and Records of *H. III.* and *Ed. I.* and about those cases, concerning these Princes dealing with and handling of the Jews; and I believe he might have cited many more.

Mr. *Prynne*, in his Book which he calls *The Second Part of a Short Discourse of the Jews*, *Discovered and Harshed Reviv'd* since England's humbled in the year 1555, has a long treatise, in which I believe an hundred Records and Histories are cited to this purpose, That the Jews did exact and enrich themselves by usury, to the great impoverishing of the people; and that the Princes of those times policed them, taxed them,

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and

and took away the estates of the Jews from time to time; and thereby a man might think that these Kings aided them but as fiances, to make them grise what they could from others, and then squeezed it from them into their own treasury: and it might in all probability be so. The Story is true, my Lord, as he relates it, and in the Rolls there are a multitude of them cited to that purpose.

But besides Mr. Prynne, there is a Statute of *Merton*, c. 5. made 20 H. III. my Lord Cole in the 2d Edg. 89. says, was principally designed against the uttermost Jews. The Statute de *Judeis*, 12 E. 1. relates, that the King's people had been dishonoured, much injured and impoverished by the usury of the Jews, and enacts, That as few thereafter should take usury upon Loans, Rents, or other Things. And in the 2d Edg. 307. my Lord Coke, in his Comment upon that Statute, says, That 15,000 Jews thereupon went out of the Realm.

So that, my Lord, we do not dispute but that the said alledge may be true; that the Jews were extortioners, and the King took away their estates: But the matter is the use and application of that fact.

For, first, I think if it be known, as, and taken to be according to any known law which we have, that they were as alien enemies, then as the King might take away their estates: for the subjects may take them away too; for there is no such use to be made of it as the other side would have; as I perceive. They say as Infidels the King would take away their estates, because they are perpetual enemies; and I say, if they were alien enemies, then the subjects might take them away too; for so the Book says.

But next, my Lord, I do use it another way; That all their dealings with the Jews shew, that they were not alien enemies, but treated as alien amies, as the King pleads. For, my Lord, if they were alien enemies, and the Book says they are true, as *God's* law enacts them, then all their contracts and dealings were all absolutely void, they could never have any property. How could they then be guilty of usury? How could any man living be extorted upon by them, to pay any money due to them upon contracts, or bargains, unless these men were treated as alien amies? How could they have the benefit of their contracts, as other alien amies have? So that I take it, that is a strong evidence that they were treated as alien amies; otherwise it is impossible that which you say could be true. That they could hurt the King's people by extortion and uttermost contracts; when, according to your law, they were not able to make any contracts, or have any property at all: Is it possible the King could take away their estates that had none? And they had some, if your doctrine be true. If any man owed them money, they could not recover it, because they could not bring any action; and the King could not have it, because it was a void contract made with one not capable of making a contract. So that, my Lord, the influences they make use of, are, I hope, influential and strong arguments against them, not for them. They were taken notice of as alien amies, capable of making contracts, which the King's subjects were never bound to perform, unless they were legal, and they obeyed by them by law. As for these ancient Records in general, time had hidden the knowledge of the laws, and traditions of those times. It is not possible to know what the laws and traditions of those times were, or rightly to distinguish between legal and violent acts.

And so being references from thence to conclude in judgment now, is not for against, or like dependencies, which unless latter times have concurred or agreed with, are only fit to make disorder and confusion.

Secondly, But that which is deducible from hence, is not, as I conceive, what has been endeavored.

That they had no property, because the Princes of those times took from them their estates when they pleased, and taxed them how or in what manner they pleased.

But perhaps the reason was, that these people being under the Turks, and being a vagrant people, without Head, Prince, Governor or Country, it was no difficulty to tax or take from them at pleasure, being hand of the people when they lived.

But it could not be as they would have it, that they should be amongst us alien enemies; for an alien enemy can neither make bargain nor contract, nor be capable of property.

But the subjects may, at will and pleasure, fall upon and take all that he has to his own use, as upon the King's enemy; and what he can take from him is his own acquisition, as the price of his adventure, and conquest over his enemy.

The Books cited 12 E. IV. 3. & 7. prove this.

But by what is alledged by them, that they were great usurers, and had great estates, it is evident, that they were here treated as alien amies: How could they live in such multitudes live amongst us? How could they be usurers, and get riches, if they could not make contracts? How is it possible they could preserve their bodies or estates against the King's subjects, unless they had the King's protection, and were treated as alien amies? And of latter times, how many of them have lived amongst us, driven great trades, have had, and have at this time, considerable estates?

Let it now be alledged, that any man thus will, may take away their estates: that they can have no remedy or action for their debts owing to them, but instead thereof may be beaten or imprisoned as enemies to the King.

And we shall probably see, what the success of such a judgment will be. My Lord, that they are taken notice of and handled as other aliens, without any distinction between alien enemy and alien Infidel, I would offer this as an argument. The question, I confess, is new, and to there is not much that I can find in our Books about it, but the Act of *Navigation* made in the 12th year of this King, a year before this Charter now in judgment before you, concerning trade, shews, that Infidels have the same liberty of trade as Christians; that Act being made for license of shipping and navigation (it is a. 18.) prohibiting goods to be imported by any foreign Ship, except those of that same Country where the goods do grow, and distinguishing not between Infidel and Christian Countries, but expressly says, That we overseas, our commodities of the growth, produce, or manufacture of any of the Christian, Infidel, Dominion or Territory, in the Ottoman or Turkish Empire: And does enact, That no goods shall be imported from that Country, but in our Ships, or Ships of the Country of which the Goods are, and doth say to be sailed by a Master, and three

or more of the same Country. This must be an assistance and an allowance, that the masters and mariners of that Country have the same freedom and privilege of trade that other foreign aliens have; and then it plainly shews, that the Infidels of the Turkish Empire have liberty of trade here.

My Lord, the Act for coinage and pawnbroys has general and void impositions as upon the commodities of all Infidel Countries, without any distinction, brought in by, or with any manner of distinction. So that I think, that this opinion of a difference between alien Infidel and alien Christian, was not taken notice of, nor known, nor thought of, till now: For, my Lord, if it had, it is unlikely the Act of *Navigation* should provide and give allowance, for the masters and mariners of Infidel Countries to come hither with Goods, when by Law they could never come in, but were enemies, and to be knocked on the head if they did.

My Lord, pray let us consider of late times what a number of Jews have lived amongst us; should we declare thus for Law as this day, that the people ought to take them as alien enemies, strip them, plunder them, knock them on the head, kill them, and say them, what would be the consequence? What work would this make? For if this be true, what they affect that they are perpetual enemies, then we can have no peace with them; whoever owes a Jew any thing may play the Jew with him, never pay him; whoever has a mind to any thing he has, may take it away from him; if he has a mind to beat him, and knock him on the head, he may, there is no protection for him, nor peace with him.

My Lord, I do believe that 'tis true, that the Jews being under the Turks, and having been a vagrant people for so long a time, and having no Prince to defend them, it is probable, they have been made havoc of, and our Kings and Princes have made bold to do with them according to their own pleasures; though what is recorded of us, is so long ago, that it is hard to know the whole truth: But I think they are no precedents to be followed now, unless they had been followed by a sanction of practice and authority in our Books of Law: for otherwise many times a man might argue of old Books from dark things to darker, as long as he will, and never make any thing clear. In the case of *Sunderland and Hesse*, there was occasion for this to be taken notice of, if this opinion had been true Law. It is reported in 2 Cr. 2. 463. A man employed another to sell Jewels in *Barbery* for him, and the other person did sell them as your Jewels, when indeed they were counterfeit, and not above 1000 value to the King of *Barbery* for 3000. and the other person finding himself cheated, imprisoned the plaintiff that sold them to him, and he repayed him his money; and he brought an action upon the promise that employed him to sell them. It would have been of use in this case, if the contract and sale, and the lawfulness of carrying in trade by Christians with Infidels had been questionable, for the Defendant in that action had have urged against the Plaintiff, What reason had he to sue him? For what had he to do to go amongst the King's enemies? and he ought not to recover damages for any such thing. I say, it would have been of use, if any such point of Law had at that time been in thought of.

In that case, it was of all sides admitted, and but so much as objected, that this contract was void, because the King of *Barbery* was an Infidel.

So that this opinion, that Infidels are perpetual enemies, and in perpetual hostility, can maintain no action, nor have any property amongst us, has no authority for its foundation, but only some extraordinary sayings, without debate or consideration; and so it is against the constant practices of Princes and People at all times.

Perhaps it is an small part of religion, that men should speak, and deal plainly and uprightly one with another.

We know that religion too often has been made a cloak and veil for other ends and purposes. It should not be so, and I hope will not be so to us in this case.

My Lord, the Statutes that I have cited, they have made no manner of distinction between Infidels and Christians in manner of trade; and it is hardly to be thought, especially as to force of the latter ones, but that there was made with Infidels then: For it is scarce to be thought that our Princes should go thither only with forces in their hands, or make war upon them, and afterwards to make peace with them, and no notice be taken of the law about trade concerning Infidels.

The Statute I have cited of *Magna Charta*, cap. 9. E. III. 25. E. III. 2. and 12 E. III. all declare and enact the freedom of trade, in all general words, except only such as are in war with the King: In none of them is there any exception of trade with Infidels.

My Lord, we had no trade with Turkey or Barbary? Our Kings were with amity to the *King of Spain*, and Richard had made war and peace with the *Turks*: Had we no trade there but with our friends?

But to look nearer home, *Spain* and *Portugal* were Infidels, and in the hands of the *Moor*, in the year 1494, which was 14 E. IV. Can it be thought that in all their times between *Magna Charta*, H. III. and E. IV. we had no trade with *Spain* and *Portugal*?

Stat. 12. H. VII. cap. 6. was made in the year 1497, which was but 23 years after the *Moor* were driven out, and in that Statute 'tis enacted, that the Merchant adventurers, dwelling in divers parts of England, out of London, did desire, That whereas they had their free passage, merchandise, and return, with the *King of Spain*, and Merchandise, in diverse ways and ports beyond the Seas, as now into Spain, Portugal, France, Denmark, Lapland, and Friesland, and divers and many other Regions and Countries, in hope and amity with the King, that they were inspired upon by a Company of Merchants in London, and forced to pay duties.

I only make use of the motto, to prove the free passage there mentioned to *Spain* and *Portugal*, and to other Regions and Countries.

There is an distinction of Infidel Countries from Christian Countries, though *Spain* and *Portugal* had been so lately Infidels.

'Tis most probable the trade they had then was with Turkey and Barbary, as well as with *Spain*: The words after *Regions* and *Countries* seem to imply as much, and the freedom equal.

So that, I think, as to this objection, That Infidels are perpetual enemies, that we can have no peace with them, or they maintain any action, or have any property by our law; I think the authority to maintain it none at all. The constant practice, as well by Princes as People, is constantly against it.

The

The Charters that they have cited to *Barbery* and other places, none of them are before the fall of these Statutes, nor is the Statute of *K. Henry*, and yet there is no difference taken notice of there between *Christian* and *Infidel* Countries: So that, my Lord, taking all together the light, or at least the weak authority of their sayings and occasional difficulties, from this distillation of *Infidel* or *Christian*, in point of trade, will signify but little; and the constant practice of all our time, wherein we have any sort of trade; and the arguments drawn from the Records that have been cited of the *Year* having property and allowance to live amongst us, and our dealings with foreign nations taken notice of in our Acts of Parliament, without such distinction, seems to be a practice to quite contrary to their sayings, that are perhaps taken out of some zealous Catholic Authors of these superstitious times, rather than conforming to the rules of Law, that they can be no foundation for this distinction; especially considering that *Spain* and *Portugal*, as I said, 'till the middle of Edward VIth's time, were possessed by Infidels; and yet I cannot but think they must be traded with, and so men can find any thing of the distinction but only out of these occasional sayings in *Cassia's* case.

But be that point of trading with or without licence (which I mentioned before) how it will, yet I conceive that point will never be sufficient to ground this same sole trade, or to found a Monopoly upon; that cannot warrant a Grant of a sole trade, sole buying and sole selling, to be granted to you and your successors, your sons, servants, apprentices, factors, and such as you shall license for ever: There is a licence and grant in perpetuity, not as to those that then were, but to their sons and successors; and those whom they shall license, and this into a very great part of the World.

And by the same reason all *Turky* and *Barbery*, a great part of the *West-Indies*, and other places of the World, may be monopolized; and perhaps all *Christian* Countries.

The Statute of Monopolies has no allowance or exception for Monopolies to *Infidel* Countries; that is, against all sole buying, sole selling, or sole using of any thing.

And the *Turky* trade was used long before that time, as by Charter, granted 33 *Edw.* So was the *Barbery* trade, as by the Charter thereof; and I believe to the *East-India* also.

And the Statute of Monopolies being in general (the *Prerogative* not reasonably conceivable to except this Company out of the extent of that Statute, which all Patents that may be granted to Companies of Monopolies, are by that exception or *Prerogative* out of the Statute) and delivering for the suppressing of great evils as Monopolies are, and always have been accounted.

I hope it will not be avoided upon any imaginary difference in Law, between *Infidel* and *Christian* Countries to monopolize thereby the trade, perhaps of the greater part of the World, as *Turky*, *Perfia*, *Barbery*, *East* and *West-Indies*; for the *West-Indies*, I think, the greater part are *Papists*.

My Lord, I have looked over the cases that were here, and the debates that have been printed in 31 and 4th of *King Charles I.* about the King's Power of imposing rates and subsidies, and impositions upon merchandizes, in *Dato's* case in the *Exchequer*, 4 *Car. I.* 2. *Id.* 13. and *Mr. Rymer's* account of the debates in Parliament at that time about that matter: many things there had concerning the King's Power of restraining and prohibiting of trade, and the *Writ Ne Exeat Regnum*. And from their reason, they that argued for the King, upon reasonableness of impositions upon merchandize. That case arose from an imposition upon *Cannons*, and methinks if there had been known any such distinction, as they would here intimate, it had been of great use in that case as well as this; but throughout the Arguments and Reasons there debated, they did never make any distinction between *Infidel* and *Christian*, but native and foreign commodities; and did endeavour to have a prerogative in imposing rates upon them; and the reasons were these, and all the Arguments run thus: The King can prohibit and restrain any Merchant to go out of the country by *Writ*, *Ne Exeat Regnum*; the King can prohibit any foreign commodities to be imported; then none can go out without licence, nor import without licence, and consequently it is a legal thing, when this licence is granted upon the payment of such a duty or imposition, or under such a rate as can be agreed on between the King and the Merchant; and therefore such an imposition or rate is lawful.

These were the arguments in that case, and in these arguments it appears that a restraint in consequence does import a tax, rate or farm, for a disposition of what that restraint is.

For if licences be requiring, it is worth consideration, whether that will not introduce the imposing of rates without Parliament, or otherwise than as a parliamentary way. This, I say, is worthy consideration. Suppose it true, these have been licences to go into *Infidel* Countries to trade; so there have been to go beyond the *Sea*, and have been to other trade besides that: yet it does not follow as a true consequence, that it is unlawful to go or trade without licences; much less does it follow from thence, that such a Patent as to any one or few Subjects, or to such a Corporation, to have the whole and sole trade into any place, and power of licensing others, can be warranted by it.

I do not question, but that King *Charles I.* might have the privilege of Merchants and Merchandize in some cases, and to embargo Ships in some cases.

But there are upon special reasons; as,

First, In the case of War.

Secondly, In the case of such Merchandizes as are necessary for the defence or safety of the Kingdom, to restrain their Exportation.

Thirdly, In case of a plague from particular places to import, But then these prohibitions are general, and their particular reasons and grounds are apparent.

But if under any pretence any sole trade to some one person, Body Politick or Natural, be granted, excluding all others; that Grant, I conceive, is in deceit of the King, and to the prejudice of his Subjects, and void.

Never has such a Grant hitherto had any judicial allowance; nay, so far from that, that as far as I could observe, no opinion has been till within four or five years, that such Grants were good to exclude others, nor any action or suit ever advertised before now, to be brought upon any such ground.

So that, my Lord, as to this great point, both the old Common Law, and the old Statute Law, and the Statute of Monopolies, with submission, are against this Grant of the sole trade; and the distinction between *Infidel* Countries and *Christian*, is in this, and upon this a bottom, that I hope it will never be strong enough to bear the weight of to grant a conference as to this. For though at present *Infidels* be distinguished from *Christians*, yet from their arguments and kind of reasons, they must be reluctant of going beyond *Sea* and trading, *Spain* and *Portugal* may be brought in, and *France* too; and so the argument will run from *Infidel* or *Christian* at length, and I know not where it will stop.

So I humbly leave that point to your Lordship's judgment, whether such a Grant of a sole trade, appears to be such a Grant, as in good accordance to Law; and whether or no, notwithstanding what they have said, it does not appear by the old Common Law, and the old Statute Law, and by all our late Acts of Parliament, to be in Law a valid Grant?

The next thing, my Lord, I come unto, is the second point, which I shall be best thought to answer, I have taken up much of your time, and I beg your Lordship's pardon for it, because if I mislike not, it is a most weighty point in the consequence of it. But then supposing and admitting these Grants to be a good Grant, whether or no, can you maintain this action? If the Law should be so, that the Defendant ought not to have traded there without licence, then he may be punishable at the King's fall, by fine and imprisonment; but that you should maintain an action against him, what cause of action, what damage of loss to you, have you laid in your declaration? You say, in your declaration, that the Defendant *Swam*, and being a Member of your Company, not a Son, Father or Servant, not Agent of your Company, traded into the *East-India* in the places within the limits of your Charter, and has there brought various and bargained and sold merchandizes, and imported and sold them in *England*, against the will of the Company, and to their prejudice and impoverishment, against the form of their Charter, and to the Company's damage 1000 *l.*

First, You have not alleged in all your declaration, whether or no he had a licence from the King, and that is night: for I think, that the King is pleased to give in his Letters Patent, he will not grant licences without leave of the Company, yet he may do so, if he please, notwithstanding that Grant.

Secondly, Then you have not shewn any loss or damage you have had by his trading thither: did he buy so much of the merchandize of the country, as not to give them sufficient for you to furnish your Ships withal, so that they came hence empty? No such thing is alleged. Did he hence export to sell there so much merchandize, as not sufficient for you here to buy? Or, did he bring hence home so much, as that there were not houses sufficient for his Goods and yours all? There are no such things alleged; or in the truth so, as that hereby your importing your prices upon your commodities, selling at your own prices, and excluding what you thought fit, was hindered; and for this you would maintain an action.

I think it will be the first time, that ever a man recovered damages for being hindered from importing and selling his own price, or having the advantage of his Monopoly, or for trading for you to furnish your Ships withal, and under selling his own commodities and merchandizes lower than the Plaintiff can afford them.

You agree by your own declaration, that there are many others that are concerned as well as you: you say, you have the sole trade to yourselves; your Factors, your Servants and your Sons, as soon as they come to twenty-one; all that are of your Company, all that you grant licence to, all that you shall assign your trade to; all those have an interest, if you can maintain an action. Other people have trade there as well as you, can they maintain an action?

A Commoner may bring an action upon the case against a stranger, for putting his Cattle into the Common, provided so the Plaintiff do recover by the law; but the Commoner has not sufficient Common as before, and have a damage, otherwise he can maintain no action.

In *Robert Mealy's* case, 9 *Car. II.* it is there resolved, That for every feeding of the beasts of a stranger in a Common, the Commoner shall not have an action or action upon the case; but an action does lie, if the feeding be such, that the Commoner cannot have common pasture for his own beasts; and then it is the consequence, the loss of his Common, that gives him cause of action.

In an action alleged in the declaration, that your trade was anything the worse. No damage appears to you by it: What reason, that you should recover damages, when you have not furnished any loss? And you have it then contains to cause of action; how can your declaration be good?

You should now, if you would have made a declaration, that should have intitled you to a cause of action, have shewn how you suffered by *Swam*, a stranger trading to the *East-India*; that he bought up all, and you could have nothing; for if he left enough for you, what hurt have you? What reason is there you should recover damages, if you have not furnished any loss? And if you allege none in your declaration: How is your declaration, that there is no such loss, maintainable?

In the case of Monopolies, 13 *Car. II.* *Robt. Mealy* 1st part fol. 106. The last point in this case is a full authority in this point: That admitting the Monopoly to be good, for the making and selling of *Cane*, that was granted to *Dewey* for 13 years, yet no action would lie in that case, though the Defendant did, contrary to this Patent, sell *Cane*. Adjudged that it was a Monopoly, and Patent void: that if the Patent had been good, yet no action would have lain against the Defendant upon it.

My Lord, if that be so as it is declared to be in that case, in the last point resolved by the Judges, if that action would not lie there, this will not lie; supposing his Charter to be never so good, and the Defendant has done contrary to it.

My Lord, there is only one other reason for which the action will not lie; and that is grounded upon the Letters Patent, as they are granted to you. For by the Letters Patent, it is not absolutely, but *Ad vasa* granted; that you shall have the sole trade, and that no other person shall trade there, under pain of forfeiting ship and goods, or half to the King, another half to the Company. So that, my Lord, the words of restraint are not absolute, but only under such a penalty and forfeiture.

Now, my Lord, if I should suppose this Patent to have all the force and strength that they can desire; supposing that this Patent were in an Act of Parliament, passed in this manner, that did restrain all persons from trading to the *East-India*, except the Company, under pain of forfeiture of ship and goods; under favour, you that will have

advantage of this refusal, much like it in that manner as the Act does give it; you shall not have any other penalty or punishment, but what the Act gives. If or when any new Law is made, you must take it as it is, and so otherwise, till another new Law be made. And so is the Rule in *C. 7. p. 11. Co. 56. b. 59. Plowd. Com. 206.* It cannot be altered without a new Law.

And I would but only suppose upon the Statute of *Edw. VI.* that gives the owner of either public damages against him that lets them out to third; a man brings an action upon the case, would that be well? No, he must take the Law as it is; such an action never was brought, nor if brought, could be maintained; yet here the damages are given to the party.

The like of all other special Statutes, a man must only follow the Peculiar Statute inflicts, so that this action cannot, as I conceive, be maintained. So that, my Lord, taking all together, admitting (who I hope it is not for) that this Patent is a good Patent; yet you are not the sole persons interested, there are others besides you, your Grantees, Factors and Servants, and Servants are to trade there. You have not laid any particular damage, therefore you cannot, by the reason of the case of *Monopolies*, maintain any such action as this.

And if you will take advantage of this Grant, it is reasonable you should take it as the Grant gives it, good for the furniture of ship and goods, but for the action of the case, your Charter does not give it; nor, if an Act of Parliament had been passed after this manner, would such an action have lain.

So that to conclude,

First, That that which this Company claims in this case by this Patent, to have the sole trade to the *East-Indies* in their policy action, excluding others, is a Monopoly, and impeding against the Common Law, and the ancient Statutes, and the Statute of *Monopolies*, 21 *Jacob.* and therefore they have no right to have what they claim.

Secondly, That what the Defendant has done in this case, he has lawfully done, and therefore not to be punished.

Thirdly, That tho' the Company had a lawful claim to the trade in such manner, as in their declaration is set forth, and the Defendant done what he ought not, yet they cannot maintain this action.

And upon the whole matter, whether best for the Company to have judgment for them or against them, may deliver their thoughts.

But this being in great in the consequence, as the whole trade of the Kingdom depending upon it, I have laboured the more.

The ancient Laws, the ancient ways, is what I endeavour, and against new ways upon any pretence whatsoever.

And therefore, my Lord, I humbly beg your judgment for the Defendant.

Lord Chief-Justice. Do you intend to have another Argument in it, Gentlemen?

Mr. Solicitor-General. What your Lordship pleases.

Lord Chief-Justice. It is a case of great weight and consequence, perhaps, as ever any case, that has come into *Exchequer*. I must needs say, it has been extraordinarily well argued on both sides; and it must be necessarily taken notice of as a point of great consequence, wherein the King's prerogative, and the privileges of the *East-India Company*, and this joint trade, are concerned on the one side; and the benefit of particular persons, and the liberty of free, unobscured trading is concerned on the other: and it is fit these should be all the considerations, and all the deliberation upon a matter of this great moment, that possibly can be.

I cannot be so wonderfully captivated with the differences, that have been made between the Charter to the *East-India Company*, and those to the *Turky Company* and the others; and that I have seen much more in the defence of Charters and Corporations, than I am of opinion there is in such great matter of consideration due to them; but I take the Common Law to be the best Law in the World. For that Charter, that you Mr. *Pelley* defended here to be brought after judgment given against it; the Corporation became as voidable within a few days, as you say this way, so does could be it, tho' there were days that went to wait upon that Corporation, but came away as empty as they went; and I with the days were like to be as well furnished from the one, as they are from the other; and therefore there can be no great matter in that. But there is another thing that very much deserves consideration, it is a question wherein trade is highly concerned; we know we have a potent Neighbour, who has both experience and industry, and are our rivals in this trade; I wish we had as much industry, and were as diligent as they; they have found by long experience, that a Joint-Stock is the only way to carry on their trade, I mean *Holland*. And it is very well known, if it had not been for a Joint-Stock, the trade had never been so beneficial as it is. And Mr. *Sandy* would not have had such a desire to the trade, for it would not have been so well settled and fixed; and therefore, I take it to be a wonderful thing, and to carry a great consequence in it upon that account, that we should consider how this trade comes to be so great, and so desirable. Now that by the Joint-Stock, and industry, and experience of the Company, the trade is become facile and valuable; for particular persons as come and sweep away the advantage of it, that ought to be well considered. Mr. *Sandy* and his partners are very zealous now to reap the fruits of the Company's labours. But suppose this question should be asked, Will you be contented to come in and pay your proportion of all the charge these people have been at, to put the trade into this capacity it is in? But in fact, after they have reduced it into good condition, as a vast expense and trouble, for other particular persons to come and lay, let us have the benefit of it, that have had nothing of the burden and charge? And when there is another consideration of great consequence, peace and war, no one doubts, are actually in the power of that Prince and People with whom the trade is. I would desire to know, supposing an injury should be committed by any particular person to the *Indies*, and the ship get away, will not all the rest of the Company's stock, being of the same Nation, be in danger of following by it? Certainly it would, and therefore since they are likely to answer for the wrongs, it is not fit they should have the management of it? So we may, if we come to argue by consequences, easily find out a great many inconveniences on both sides; but they are not to over-rule the Law one way or the other, they are species precedents by way of argu-

ment, but the Law is a certain rule, and consequences are not one way or other to over-rule it. The main point truly is a point of great consideration and weight, perhaps as considerable as ever any that has come in debate here, and therefore it is fit, that all due deliberation be taken to have it debated.

Mr. Justice *Windsor*. Mr. *Pelley*, you seem to argue that the King's Grant to them is a void Grant, and against Common Law, as being a Monopoly in granting them the sole trade; then that does not come to the point in *Albion's case*, about trading without Licence with *Indies*; and therefore you go upon another ground, than what Mr. *Sullivan* did.

Mr. *Pelley*. I go upon the particular case here before you.

Mr. Justice *Windsor*. And you have not given any answer to the Petition of the Commons, cited by Mr. *Sullivan*.

Mr. *Pelley*. Truly, Sir, I think, it does not need any answer; for I go chiefly against this Grant, which is against Law, and void.

Lord Chief-Justice. Truly, Mr. *Pelley*, I am not much in love neither with your other point about the action; in what became, pray, of all the actions that have been brought upon that Statute of *Monopolies*, by the Patience of new inventions, as there has been multitudes in my Lord *Hale's* time, and at all times?

Mr. *Pelley*. In this case there is no body but the particular Grantee, that has that invention; and he brings the action. But here, of your own showing, you have intitled others to the trade, as the servants, and factors, and children; and therefore you can never have such an action.

Lord Chief-Justice. When will you have it argued again?

Mr. *Pelley*. We shall be ready for the Defendant next Term.

Lord Chief-Justice. That is a little too soon, there's but a very short Vacation, and thus is but a short Term; I think you had best have another argument in *Albion's Term*.

Mr. Solicitor-General. Yes, if your Lordship pleases.

Mr. *Pelley*. What your Lordship pleases, we shall be ready, if your Lordship pleases to hear us next Term.

Lord Chief-Justice. I know Mr. *Sandy* is in very great haste; but the seal and transport of any particular person must not think to oblige us to go hand over head in a case of this great weight and moment; there is great consideration to be had of the length of time that this Company has continued; there has been an *East-India Company* as King *Jacob's* time, in the last King's time, and in this King's time.

Mr. Justice *Windsor*. And here is a great trade settled, we must not destroy it presently.

Lord Chief-Justice. We must not gratify the seal and transport of Mr. *Sandy*, by being over-hasty in this matter.

Mr. *Pelley*. My Lord, we shall be well content to stay till *Albion's Term*.

Lord Chief-Justice. Ay, I know the Counsel well; but whether your Client will or no, I cannot well tell, nor do not much care. Well, we will consider of it, and hear another argument in *Albion's Term*.

Mr. Attorney-General (Sir Robert Saenger) his Argument.

The Governor and Company of Merchants of London, trading to the *East-Indies*, Plaintiffs. *Thomas Sandy*, Defendant.

De terminis S. Michaelis, Anno Regni Regis 36 Car. II. xxi. Anna Domini 1684.

IN an action upon the case brought by the Company against the Defendant, for trading into the *East-India* contrary to their Grant, in prejudice of their trade, and to the damage of 1000 *l.*

It comes before the Court upon the Plaintiffs' decurser to the Defendant's Plea of the Statute of 15 *Edw. III.*

The Record having been so often opened at large, I shall only put it as a Case upon the Record.

The King by his Letters Patent, 31st April, 23 Car. II. reciting that the Company had long been a Company, and enjoyed great liberties and privileges under the Charters of Queen *Elizabeth* and King *Jacob*, grants the Company the sole trade and traffick to the *East-Indies*, being an inland country; with a prohibition to all others of his subjects to trade thither, without the leave and licence of the Company.

The Defendant not qualified as the Charter directs, without the leave of the Company, and against their wills, trades to the *East-Indies*, to the prejudice and damage of the Company's trade.

Upon this case, the points which have been moved and argued, are two.

First, Whether the Letters Patent giving licence to the Company to trade into the *East-Indies*, and to exercise the sole trade there, with prohibition to all others to trade thither, be good in Law.

Secondly, Whether admitting the Patent good, this action will lie for the Company?

In debating of the first point, I shall not go about to maintain the validity of their Letters Patent, or any such of like nature, to bind up the King from granting licence to other of his subjects as he shall please; but shall content myself, to show that all the subjects not licensed by the King, nor authorized by the Company (as the Defendant is nor) are bound by these Letters Patent.

Where the question will be between the King's prerogative (and that in one of the highest points thereof, which concerns the defence and preservation of his Kingdom), and the intercourse with foreign Nations, on the one side; and the general liberty of trade, which is a tender point, and nearly concerns the interest of his subjects, on the other side.

It therefore being a question of great consequence, and of greater consequence than difficulty, as I hope to them; I shall, in examining into the point, use the utmost caution, by affecting the King's just prerogative in this matter, and not in deprecat the subjects true liberty of trade.

The subject matter of this question, only relating to a foreign trade with *Indies*, not in trade with the King of England, doth not necessarily oblige me to enter into the consideration of any other trade,

trade, or of the King's prerogative, or the subjects liberty in relation thereto.

Which would much shorten my stay in supposing these Letters Patent, and the trouble the Court is like to receive thereby.

But because the great force of the arguments made use of on the other side against these Letters Patent, have been drawn from principles and precedents of Law, which concern as well the inland trade and traffick of this Kingdom, as with other Christian Nations in amity with the King of England, with whom leagues of commerce have been made by our Kings, or to whom a common trade hath been laid open by several particular laws:

It is made necessary for me, from the other side, a little to consider these trades, and how far the subjects liberty or the King's prerogative be concerned in them.

Whereby it will appear, that the arguments and authorities produced by the defendant's Counsel, will be of no great force to impeach these Letters Patent for the management of a foreign trade with India.

I shall therefore briefly consider the inland or native trade within the Kingdom, and then the foreign trade with other Nations.

The inland trade is either for manufactures or other kindred.

Under the name of manufactures falls in the husbandry, and all sorts of industry, who have full right by the Common Law, to exercise what, and as many trades as they please (so as no inconvenience happen to the neighbourhood). And with this right the King's prerogative is little concerned, it cannot set it out, it being their livelihood.

Nor is the public weal otherwise concerned therein, than that all its members should live by their honest labour and industry. As to the trade of merchants, or inland commerce, every man (generally speaking) might buy of any man, whether native or foreign, and of many kinds or sorts of merchandise as he pleases, which I take to have been the Common Law before 37 Ed. III. cap. 5. whereby all trading Merchants were restrained to one sort of merchandise.

But that Act continued not long, being repealed 38 Ed. III. cap. 2.

Yet that trade of inland merchandise by order several restrictions as Common Law. 1. Notwithstanding such general liberty of buying and selling, as man could ingo of any one commodity. 2. The ancient Common Law confined this sort of trade to certain places, as Towns, Cities, or other public places appointed by the King, Ch. 3. *1st. 19. 19. in the Chap. Prohibiting*.

It was punishable to buy above the value of twenty pence elsewhere, or to asseign merchandise before they arrived at these places.

3. No abilities could be held for the traffick of buying or selling, without the King's licence, or for the free Haubers and Fairs are held by prescription, (the original Grants not appearing) yet these were derived from the Crown, by some royal licence before time of memory: they all depend upon the same Crown, and may be forfeited to the Crown.

This is so frequent in our Books, I need not cite the authorities. And here the prerogative of the Crown had a great stroke.

The inland traders, in buying and selling, might buy and sell in private places, and could not be restrained: But they could not hold assemblies for trade without the King's leave and licence; Fairs, Markets, and Bazaars, in their true notions, being no other than royal licences to assemble for trade and traffick.

And I take the Law to be the same, whether the Fair or Market be erected only, and not granted to any one; and where it is granted to a subject, all the King's subjects have a liberty and right of trafficking there, and cannot be prohibited by the Lord of the Fair or Market.

The reason of these restrictions of the inland trade of merchandise, and the King's prerogative therein, is from the concern the public peace and justice of the Kingdom both in this sort of trade, more than in the former; the manifold ways, and many manner of cheats by false weights and measures, corrupt merchandises, and too great enlarging of the prices, and breaches of the peace, occasioned by public concourses, tho' under colour of trade and traffick.

And upon this ground the Common Law provides, That to all such Licences for public Markets, which the King may grant when and where he pleases, being not to the damage of others before granted, a Court of Justice is incident of common right, for preservation of the public peace and correction of such debts which generally attend the trade of merchandising.

Finally, There was another restriction upon the inland merchandising taken notice of in our Books, which was more particular, and to certain places, viz.

The claim of foreign bought and foreign sold, by several Cities, Towns and Ports, some by custom, and others by Charters; and there is no great question to be made, but before 9 Ed. III. cap. 1. the Charters as well as Customs did prevail for that Liberty, but both were taken away by the Statute, and divers subsequent laws taken notice of in the case of the City of London, Ch. 8. *1st. 128*.

And between that and 9 H. IV. there were great brawlings in Parliament between the foreign Merchants and the City of London, and other Towns, about this Custom.

Till at length, London prevailed for a private Act of Parliament for establishing of the Customs, which they have enjoyed ever since 9 H. IV. 30.

By an ancient Record of Henry III. it appears, that the abbots, and others the religious of the County of London, under colour of selling their Stann, which arose upon their demesne lands, turned Merchants, and bought up wools, and sold them with their own wools: They were prohibited so to do by a Writ out of the Chancery.

And upon this complaint of the Merchants of London, in the time of Edward I. the like Writ of Prohibition issued, *Plu. Per. in the Appendix*, cap. 10. By which it appears, that the inland traffick of the Kingdom, which was within the care and cognizance of the Common Law, was not unlimited, nor the subjects liberty therein never so large as it is now inflated upon, to all foreign parts whatsoever.

And that the managing of the principal part of the home traffick, which Vol. VII

confists in the Ports, Fairs, and Markets of the Kingdom, depends upon the King's prerogative, and is managed under it, the Law having intrusted the King with that power for the benefit of his people, and the peace of the Kingdom.

In the next place, I will take a view of the foreign trade.

The Common Law, and our Law-books, take notice of but two sorts of Foreigners, alien friends, and alien enemies; *Calver's Case*, Ch. 7. 17.

Neither can there be any other sort of Foreigners, generally speaking, for if the question arise, whether alien Friend, or alien Enemy, it is as it be used by the leagues with the Prince, whose subject he is; which is, or ought to be enquired in *Glancy*. And tho' there be not actual war or fighting between the two Princes and their Subjects, yet they are plain ally, and may allege arms when they please, and seize the goods and persons of each other's Subjects.

I shall first consider what the Common Law determined as to the Subjects trade and traffick with alien Friends beyond the seas, and upon what foot that trade stands; and then particularly consider how it determines in case of Commerce with alien Enemies, and accidentally of Infidels.

I conceive the Common Law hath made no express provision, nor given any absolute right for the Subjects to trade with any Foreigners beyond the seas.

It will be of little use to discourse how far the Law of Nations intervenes in this matter: whether every Nation be obliged to entertain Trade and Commerce with another Nation.

And antecedent to all leagues and treaties for Commerce, little will be found besides the laws of Hospitality, which do not give any demandable right.

Bohm, in his Book de Repub. lib. 1. cap. 6. 7. says, *Quo tempore* *non* *gubernator* *est* *inductus* *prohibere*, *tenet* *esse* *a* *Principibus* *voluntate*.

And in his Book de Repub. lib. 1. cap. 6. holds, *That it is lawful to forbid Foreigners from entering the borders, not only if a war be in fact, but in time of peace, these manners of the Infidels may not be corrupted by civility with Europeans*.

And in his Book de Repub. lib. 1. cap. 6. 7. *That the Laws of Commerce are contained in the particular compacts and agreements of people and Princes*.

What *Bohm* declares to be the Law of Nations, exactly agrees with the Laws of this Kingdom; for all Strangers come either under safe-conducts, which contained both the King's licence and protection of them.

The King might inhibit Foreigners from coming into the Realm, and might restrain them where.

Magna Carta, cap. 30. which is a general safe-conduct to Merchants—*It is the King's prerogative to the King, not public prohib.*

My Lord Coke, in his Comment upon this Chapter, 2 *Id.* 5. 7. admits they might have been prohibited before this Statute, but constitutes the fixing of this Prohibition by Act of Parliament.

Which Constitution, as it is without any former Precedent or Authority, so it is against the constant stream of Precedents and Practice ever since.

Rat. Clauf. 23 H. III. *1st.* which was after this Statute, the King sent his writs to several Mayors, commanding that all the Merchants, who came, should depart the Kingdom within a month.

And in the same Roll, *2d.* there is another Writ to the Mayor of London, giving leave to *Ramon*, *Bisconne*, and some other Merchants, to buy till the feast of St. Martin in the year following.

And the constant practice in every King's reign since, hath both been by proclamation and orders of Council, to command foreigners to depart the Realm.

Besides, the construction my Lord Coke puts upon it, makes the clause idle and superfluous.

That one Act of Parliament should provide for a saving by a subsequent Act, which of itself would be repealed by the former.

So where an Act of Parliament prohibited foreigners to come in, the King by a private Council might have licensed them.

The Commons, in the Parliament a H. V. pray, *That the Statute made by Henry IV. for avoiding of Strangers out of the Realm, might be put in execution*. The King grants it, saving his prerogative so far as he pleases. The Commons reply, *Their intention was not to abridge, nor ever should be by the Grace of God, a H. V. No. 15. Roll. Prolegation*, 180.

This might further appear by the several Statutes made for the inviolable observation of the King's safe-conducts, which are in express words mentioned to extend to alien enemies, as well as alien friends; 2 H. V. cap. 6. and 30 H. VI. cap. 1.

It is held in *Heve and Py's Case*, *Hill* 21 and 22 Car. *Swords*, *Bona Regis*, *Seymour*. That as Common Law the King might prohibit the importation of foreign commodities, before the Statutes therefore made.

So then as the safe conduct at Common Law, foreign Princes and Nations might prohibit the subjects of England to trade with them, as the King might prohibit foreigners to trade here.

The King might inhibit any of his subjects from going beyond sea. And this might have been by particular Writ or general Proclamation.

Our Books and Precedents are so full in this point, that it was admitted on the other side, that there could not be produced any authority that renders it the least questionable, but undoubted as far it.

Rat. Clauf. 23 H. III. *1st.* A Writ to the Sheriff of York, to seize the bodies and lands of such as had gone beyond sea, contrary to the King's Inhibition.

Rat. Clauf. 41 Ed. III. *1st.* 24. *1st.* Writs to all the maritime towns to take care that a Proclamation prohibiting all his subjects (except not 4 Merchants, and these unnamed) be put in execution.

Herby it is evident, that it was penal to go beyond sea, contrary to the King's Inhibition, before the Statute of 5 R. II. cap. 2.

All that that Statute adds to strengthen the King's Inhibition, is only a point of further penalty, viz. A forfeiture of the Goods of the said person, and of the Vessel of the Matter exporting: And tho' there be three sorts of persons excepted out of that Statute, viz. Lords and other great Men, rich and notable Merchants, and the King's soldiers; yet that Law gave those persons no other liberty than they had before, only leaves them out of the Penalty provided by that Statute.

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What I shall add, I only concerning the necessary dependence of that trade upon leagues, in its continuance and regulation; if the league be broken, let the buyers right be what it will, to trade either singly by Grant, or by Act of Parliament, it is forfeited, and after Proclamation made, become unlawful and punishable, as trading with enemies.

The leagues and treaties with foreign Princes for trade and commerce, whereof the sole power is in the King, shall be the subjects of England.

They are the only Laws between Nation and Nation to direct their trade and commerce.

And by the said leagues, trade may be limited to certain places and commodities, or other particulars, as the two Princes shall agree upon, who are the only just rulers of these leagues.

A clear and full influence of this, in the license for trade with Flanders, and the Low Countries, between the Kings of England and the Duke of Burgundy, is hereby the first was settled in Bruges; and that no Wools should be sold in Flanders, but what came out of England; and that no English Cloth should be sold in Flanders, on pain of forfeiture.

22 E. III. Complaint was made in Parliament by the Merchants of several shires, even by the way of Bruges, in refusing our Merchants from selling their Wools to whom they pleased at Bruges; and pray'd remedy.

The King's answer was, that the ordinance of the Staple should be viewed, in that *Gracia Regia* was, with whom the Patent touching that ordinance was, he calls to him the same with him, and some of the Merchants of the country, who well understood this matter; and the King by advice of his Council would provide remedy; *Res. Parl.* 22 E. III. no. 10.

22 E. III. Another complaint is made in Parliament against the men of Bruges, for prohibiting the Merchants to buy Staple Wares here, and pray remedy.

The King answers that he will speak with the Flemish Ambassador about it, 22 E. III. no. 13.

8 H. V. A grievous complaint made in Parliament against the men of Bruges, that the English merchants abroad the ancient league, that no Wools but English should be sold in Flanders, and no English Cloth sold there; yet they permitted the Wools of Scotland, Castile, Aragon and Spain, to be sold there, and pray remedy.

The King answers, that he will be made for the alliance.

And upon like complaint, 9 H. V. the Commons pray, the King would please to meet with the Duke of Burgundy, that no other than English Wools should be manufactured there, or that the English might sell their Cloth there.

The King answers, he would treat that the English Cloth might be sold in Bruges, 9 H. V. no. 11, no. 12, no. 13.

But that in his case no little remedy, will arise the Acts of Parliament were made, 25 H. VI. cap. 1. (30 H. VI. cap. 4.) 4 E. IV. cap. 5. for excluding all the commodities of Flanders, until the Duke of Burgundy rescind his proclamation for banishing Cloth out of his Dominion.

These Statutes produced a firm league between the Kings and the Duke of Burgundy, who in the Record is call'd the Duke of Hain, or of the South-land, both the Merchants his subjects, who had long in England obtain'd those names.

By that league a free trade for Cloth was agreed upon for the English Merchants in Bruges, to continue for ever; and the King confirm'd to the Duke, as well the liberties granted by Edw. I. to Merchants-Strangers in general, by his *Charta Mercatorum*; as that granted by Edw. II. to the Merchants of the South-land in particular: which league was confirm'd in Parliament, 13 E. IV. no. 2.

These leagues may suffice to show the dependence foreign trade hath upon leagues, as to its continuance and regulation.

By this league the Staple in Bruges was taken off, and liberty granted to the English Merchants to sell their Cloths in any part of the Duke's Dominions.

Who these English Merchants were, I shall in this place only make a short remark. That they were the Company of Merchant-Adventurers, resident and located for the better regulation of trade for Wool and Cloth, beyond the Sea, by Letters Patent, 1 Edw. 3. H. IV. and confirm'd by other Letters Patent, 1 Ric. 2. 1 H. V. which I shall speak more largely to, when I come to show the constant position the Crown hath had of licensing Corporation in foreign trade, exclusive to others.

The other foundations, upon which all foreign trade stands, are royal Licences.

I before shew'd that the licence, which the Common Law gave to trade with foreigners, was no sure foundation of trade; because it might by Law be interrupted by the King, and did in its nature import no more than a bare impunity.

But where the King grants licences to his subjects to trade with foreigners, they gain a right of interest to trade according to such licences.

Which are either by Grant only, or by Act of Parliament. I will first consider those, that are singly by the King's Grants.

That as the King may as Common Law prohibit any of his subjects to go beyond sea, so that he may licence them to go for trade or otherwise, is unquestionable.

The Writ of *Ne Exeat Regnum*, and several forms of licences in the *Register*, shew, and the privileges of our authorities make it out.

The King may grant such licences, not only where himself may prohibit, but where the Common Law, and Acts of Parliament do prohibit.

Alien Enemies are prohibited by the Common Law to come within the Realm; yet the King may allow them to come by his sole conduct, as fully appears by the Statutes made for the observation of safe-conducts.

And it is observable, that such safe-conducts put the Alien Enemy into the condition of an Alien Amicus, as fully under the King's protection, during the continuance of his safe-conducts.

No subject could seize his goods on anyone his person, but he was punishable to it, both at the law of the King, and of the party.

For before the Statutes made, controversies for trusts and safe-conducts were appointed, appears by a Record of this Court, *Polk* 13 E. III. *Mass Regis*, *Res.* that which I shall have occasion to make use to another purpose.

And that such an Alien Amicus may bring his personal action for debt, or any other, appears by the case of *Jake Draper*, 3 Statutes, 20 E. IV. *pl. 6* *Pl. D.* and *Mass* 431.

The King may licence his subjects to trade with enemies prohibited by Common Law.

And for licences to come, go and trade both within and without the Realm, against express Acts of Parliament, the influence are infinite.

But for the better merchandising of these, I shall make use of precedents and authorities, to make out the nature of the King's prerogative in all times, as to matters relating to Foreign Trade.

I shall reduce what I have to offer under three heads.

First, That the Statutes, which were the publick Means for all Merchants to resort to, were at first settled only by the Kings of this Realm, antecedent to any Act of Parliament.

Secondly, That after the Staple was established at Calais by Act of Parliament, the King gave licence to trade to other places, which no subject could do without such licence.

Thirdly, That the regulation and management of Foreign Trade in all cases, where Acts of Parliament have not particularly interposed, have been guided and governed by the King's prerogative, both as point of licence and prohibition.

First Head, As to settling the Staple in the Dominions of foreign Princes, as, in the influence of Bruges; that must be done by leagues, not can it otherwise be.

But the appointing of the Staples in England, or in the Foreign Dominions of the King, was at first by the King alone.

This is expressly to be declared in the recital of the Statute, 2 E. III. cap. 9. whereby Merchants-Strangers, &c. have liberty granted them to trade in England, according to the form of the *Gracia Chancery*.

By Merchants-Privy, distinguished from Merchants-Strangers, in this Law, are plainly intended the Merchants of the King's foreign Dominions.

The Irish, who by *Ordinatio per Statu Eboracien*, 27 E. 1. had liberty granted them to traffick into England, so the King gave licence not to go into, nor commerce with Scotland, nor other the King's Enemies.

And the *Goygoyers*, and other the King's subjects in France, who had direct licence to traffick and sell the goods granted them by the King; as appears by a difference between them and the *Londons*, decided judicially at Parliament, 20 E. 1. *Parl. fol.* 180, and 130.

That by Merchants-Privy is to be understood the King's foreign subjects, I collect from the reference this Law hath to *Almagre Chancery*, which concern'd only foreign Merchants; whereby the King's power to restrain them was refer'd, and consequently was refer'd by this Law; as is taken notice of by an Act not printed, 6 E. III. *nov. 20.* that the Staple was during the King's pleasure, and the King revoked the Staple, giving Merchants-Strangers liberty to buy any Staple-wares, 1 E. III. *Parl. Res.* *part 2* and *Adm.* 21.

A Commission issues to the Mayor of London to put in execution the orders made by E. III. for establishing the Staple in several Counties of England, and for the rule and government of Merchants.

By 27 E. III. cap. 1, the Staple was settled in several Towns in England. But that Law had no words to bind the King's prerogative to remove it; and of that opinion was the Parliament, 38 E. III. where the Commons pray that the Staple may always continue in England.

The King answers, it shall continue till the next Parliament.

The first of April in the first year, as the King remitted it to Calais; but 43 E. III. cap. 1, because of a war that broke out with France, it is brought back to the old manner, that it had been removed to Calais by the King, for the profit of the Realm and sale of the Merchants of England.

47 E. III. no. 17. The Commons pray that the Staple may be only kept at Calais, and that no Grant be made in the contrary.

The King answers, that he will appoint the Staple, as by the Council he shall think best.

1 E. II. no. 93. The Commons pray to know where the Staple shall be, if Calais haply be besieged.

The King answers, as such places of the Realm, as were laid off.

By the constitution of these Staples, Merchants were not only licensed, but oblig'd to repair thither, and refin'd to export their Staple-wares to any other place.

And altho' many Statutes were made to fortify and strengthen the Staple, by creating a forfeiture of all Staple-wares, if carried to any other place; yet by the Records I have produced, it is manifest that the sole appointment and ordering of the Staples was in the King, and that by the acknowledgment of several Parliaments.

2 H. V. cap. 6. provides, that merchandises of the Staple shall not be exported to any other place without the King's licence, before brought to the Staple, on pain of forfeiture.

2 H. VI. cap. 4. provides, that all Staple wares shall be carried to Calais, so long as the Staple is there.

And 8 H. VI. cap. 17. provides, that if Merchants export the merchandises of the Staple to any other place, the merchandises shall be forfeit; except the Merchants of *Town and France*. And cap. 27. several licences granted by the King to export to other places are revoked.

What these Staple-wares were, is fit to be known, they comprehending the greatest part of the native commodities of this Realm, that were merchandisable in foreign parts.

By the Statute of the Staple, 27 E. III. the Staple-wares are Wools, Leather, Woolfells and Lead; to these are added by a Statute made 50 E. III. Tin, Woolsted, Butter, Cheese, & carbers, and many other commodities.

This Statute, tho' it is not printed, yet is taken notice of as a Statute and a Law of the Staple, by the Statute of 5 H. VI. cap. 4. whereby Butter and Cheese are recited to have been made Staple-wares by this Law.

The Record is 50 E. III. no. 20. (or 200.) where the Commons of the Town of Calais pray that the Staple may be holden only there.

Which the King grants, that it shall be holden only there, and no where else beyond sea; as well of all ancient Staple-wares, as of Tin, Woolfells, Butter, Cheese, & carbers, &c.

The Staple was several times remov'd by R. II. but from 21 R. II. it continued at Calais, till that Town was taken by the French.

By all which it is manifest, upon what slender grounds the Statute of 25 E. III. cap. 3. that the Sea be open to all Merchants to pass where they please, was urged and insisted upon to be a Law in force, or so have any influence upon this case.

That the Merchant-Adventurers enjoyed their privileges, and permitted none to trade within their limits, who submitted not to the rule of the Company, and who should not be contributors to their public charges, as is evident from the Stat. 12 H. VII. cap. 6. inflicted on by Mr. *Pelregh*; but was made use of by him, only for the fullness of part of it contained in the petition presented by the Merchants to the Parliament for their liberty of trade; which, by what I have already showed, could not be true as to the Staple wares, unless they have licences from the King (which in all probability they had) to certain places.

And what is it they pretend to in their Petition? Only freedom to repair, and trade at the four general Marts, which being innately held and proclaimed, was an invitation to all neighbouring Nations to repair thither; and all English Merchants, as well as others, if they had law under no restraint from the Company's Charter, or other Privileges of the King, might have repaired thither with their cloth or other wares, not being staple wares, without offence, so I before admitted.

In case there had been such a right to a free trade to all Nations in any, as the Petition suggests (for as yet the Merchants request force bodily, not to pretend to a free trade with aliens, not in amity, much less with Infidels, when the laws of all Christian Countries adjudge alien enemies):

I had been the proper time for the Parliament to have asserted that right, and adjudged the Patent illegal, as Parliaments have frequently done with Patents which have been against Law. But the Parliament knew no such right, and therefore by the ruling Chief, allowance is given to the Charter; only their unreasonable demands of assistance being refused, and the fine limited to 20 Marks. And accordingly in their Charter afterwards renewed by H. VII. they are obliged to take no more of any price admitted into their Company than to market.

By the Stat. 20 Feb. 1 of a P. & M. entitled a Corporation of Merchants-Adventurers to *Wolfe*, and Parts adjacent, with licence to trade, and prohibition to others, upon pain of forfeiture of 500000 Marks.

That this sentence might be effected, the Charter is confirmed by Parliament, & c.

The Act takes notice, that several persons, after the trade was found beneficial as the result of the Company, for their peculiar pain, wisely to decay the trade of the Company, contrary to the tenor of the Letters Patent, as great disorder traded into their parts, to the great detriment of the commonwealth.

Here is a full description (*ex parte nomine*) of the defendant and his interloping companions.

By the Judgment of the Parliament then, a limited trade, under the order and rule of a Company, as settled by the Crown, was thought most beneficial to the King.

And those that traded contrary to the tenor of the Letters Patent, are reprobated differently, in prejudice of the commonwealth.

So far was the Parliament from thinking all the subjects had a right to trade there.

After the taking of *Calais*, in the latter end of Q. Mary's reign, Q. Elizabeth and the English Merchants were no doubt in great straits what to do.

For by the Stat. 2 H. VI. all merchandises of the Staple were to be carried to *Calais*, where the Staple was there, which ceased by the taking of *Calais*.

But by 2 H. V. no merchandises of the Staple could be exported without the King's licence, till brought to the Staple.

The Queen had no place convenient left for erecting the Staple at, beyond the *Wes*. And though in R. II's time, when the Parliament demanded where the Staple should be, if *Calais* were besieged? The King's answer was ready (*ver*) *at such place as England is not left*.

Yet now when *Calais* was taken, such answer would not serve the turn; but the placing of it in England would be useless and ineffectual, and destructive to the Queen's revenues by her customs.

For by several laws made by E. IV. & E. III. of H. VII. most foreign merchandises were prohibited, and great discouragements put upon all foreign Merchants coming into England, but those of the *Hear* and *Wool*.

And few foreign Merchants would repair into England to fetch our commodities, when they can bring little to home with but ready money.

And to have granted to every Merchant a general licence, as it would be chargeable to the subject, so it might prove mischievous to the Kingdom, the subjects trading lawfully, without any rule or government, in foreign parts, upon the account of the general law of reprisals, which obtains in all Nations.

Whereby every subject and his goods are liable for the injuries and wrongs committed by any one; which, as the more barbarous Countries, is executed with great liberty.

And therefore Q. Elizabeth in the direction of foreign trade, instead of Staples, for the rule, order and government of Merchants, at certain places, followed the precedents of the Merchants-Adventurers and English Companies, by erecting Corporations of Merchants for the rule and government of the foreign trade.

Which Companies as they are preferred to have a better State to answer for injuries done in foreign Parts, than any single person can be preferred to have.

So in their very constitution are more responsible to the Law for their mismanagement, by *Reu. R. R. R.*, whereby they may lose their liberty of trade.

It is very doubtful whether licences granted for trade to single persons, may be forfeited, they paying an interest, if the licence to go beyond sea, so trade or otherwise, is for a certain time; as most licences were. It is held by the Judges, 2 *Ans. Dyer*, 156. in the Case of Mr. *Barnes* and the Duchesse of *Arundel*, that the licence is not revocable.

The Queen, in her reply, erected many Corporations for foreign trade. I shall mention only some, which have been publicly taken notice of, and see in the following.

By 24 H. 7. Elizabeth, the Queen, by Letters Patent, incorporated several Companies of *Wool*, and gave them licence to trade into *France*; and that no sentence should be admitted of the Companies.

The Privilege was not general to her other subjects, but only to the men of *Wool*.

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The Company enjoyed their liberties all the Queen's reign, and flourished under them till 4 Jan.

When by Act of Parliament the trade was opened, and general licence given to trade with *France*, *Spain* and *Portugal*, and the dominions thereof, Whereupon a question arose, Whether their Charter was not let aside by a general words of 3 Jac. and therefore 4 Jac. cap. 9. it is enacted, and declared, That the general Act shall not extend to any such licence, or impose any new taxes, or the said Charter, in any of their privileges, liberties or immunities, granted to them by the said Charter; any thing to the said general Act to the contrary notwithstanding.

This Act added no new force to the Charter, but enacted and declared it to be out of the provision of 3 Jac. for general licence to trade into those Countries.

Where, by the Judgment of the Parliament, the Queen's power to grant such Charters is admitted. For if the Patent had been made in Law before 3 Jac. to make an Act of Parliament only to declare it out of the provision of that Law, were idle and useless.

The Queen's subjects, for their licence to fish at *Island*, paid the Queen a quantity of fish, called *compensation-fish*, by the Act of Parliament made 5 Hen. cap. 5.

Whereby, for the encouragement of the fishing trade, the purveyors are prohibited to take purveyance of sea-fish, the compensation-fish, payable by the Queen's subjects travelling to *Island*, at seven pence.

The Patent of the *Guineal* Company to fish in *Gu. uas* hold goods, 15 Jac. 1. p. 5. in the Case of the *Taylors of *Island**.

This trade, notwithstanding the privileges granted to the Company, was almost lost.

And therefore 23 C. II. cap. 7. that trade is opened, not only to the English, but to all foreigners residing in England.

The *East-India* Company was erected by Queen Elizabeth, 31 Dec. 41 Elix. and renewed to them and their heirs, 13 Jac. 7. Jac. with prohibition to all others to trade there, and confirmed to them by this King, 13 Apr. 13 C. II. upon which Patent the question arises about a foreign trade, which hath been enjoyed by the Company above 30 years.

In consequence contained the prerogative of the Crown, in all the Charters for foreign trade which have been granted.

Whereas I have shown, the small considerable part of the foreign trade hath in all times been managed under Grants from the Crown, in appointing the staples for Merchants to repair to, in licensing trade to other places, notwithstanding those Staples; and in licensing and prohibiting foreign trade in such Cases where Acts of Parliament had not made special provision.

I now proceed to consider of Royal Licences by Act of Parliament.

It will be infinite to take notice of the several Statutes made relating to foreign trade.

And therefore I shall at this time offer some general observations upon them.

Observ. 1. Upon examining into the ancient laws for foreign trade, it will be found that there are far more laws for restraining the exercise of foreign trade, by Englishmen, than there are for opening of it.

So much, that for a long time when the Staple was in England, they were prohibited, under severe penalties, not to export any staple ware; and when the Staple was removed beyond sea, they were confined to *Calais*, and such liberty of trade to other places as the Kings from time to time had granted.

And single persons were frequently taken off, though the King's prerogative to grant them was never yet impeached by any Statute.

The great discouragements to them by foreigners first begin in the reigns of E. IV. R. III. and H. VII. But in those Kings reigns, the English were directly held to the Staple, unless licensed by the Kings.

This observation is made out of the several laws I have touched upon, and many others, which are in the Statutes at large that are granted.

Observ. 2. There was never yet any Statute made, that gave a general liberty of trade to Englishmen to or with all Nations; but what were made in general and open manner.

The only law that had any resemblance to any such purpose, was 15 Ed. III. which obliged us, which has been sufficiently already shown to import no such thing; and the several attempts at Parliament to have introduced a greater liberty of trade with foreign Nations, in unity, and the particular laws that have been made for licensing some trades, do fully argue that the law was never understood so intend any such matter, as a general licence to trade every where.

Observ. 3. The several special statutes that have been made for liberty of foreign trade to particular Countries, or for particular commodities, are introductory of a new law, and not derogatory; and do plainly argue the King's right before to prohibit some of them as express terms, others by necessary implication.

I shall instance in some of them, the Stat. 17 Ed. I. *Ordinatio* *Reu. R. R. R.*, opens the trade from *Ireland* to England and *Wales*, for the Irish commodities.

Whereby all Merchants have liberty granted them to import their Merchandises into England, but so that they give good security, that they shall not go unto, nor communicate with our enemies of *Scotland*, nor others of our enemies.

This law retained the subject of no liberty he had before; and therefore, if the Merchant had before such general liberty, or right to import those commodities, his right of trading would have needed him giving any security; which is not imposed by law, otherwise than as a precedent condition to a right conferred by the Statute.

This law opened the trade from *Ireland* to England, as well to foreigners as Englishmen; but it extended only to Irish commodities for the exporting of English commodities into *Ireland*, continued to be managed under the King's licence till Edward III.

And if any did so to the contrary, he was subject to fine and ransom for his contempt, as appeared by 34 Ed. III. cap. 17, whereby the trade is opened for English and other commodities into *Ireland*.

By that law it is accorded, That all Merchants, as well aliens as denizens, may come into *Ireland* with their merchandises, and from thence freely to return without fine or ransom.

This law extended not to the English *Wool*-traders, but only to the aliens and denizens.

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In the next Chapter, *cap. 18.* the English are provided for, who had not so large a liberty granted them as the aliens and denizens had. The 18th chap. provides, that the People of England who have a *privilege* and *privileges* in Ireland, may bring their corn, beasts, and wools, to the best land of Ireland, and from thence to carry their goods and merchandise into England freely, without imposition.

The liberty of exporting wine Ireland, granted to the English, is restrained both to such English who have lands in Ireland, as also in the ports of the commodities, viz. corn, beasts, and wools only.

But the liberty to export from Ireland is larger, extending to all commodities, according to the latitude of *Ordinatio Hibernica*, which took in all Irish commodities.

§ 8. *Ed. III. cap. 11.* The King withs of his grace and sufferance, That all Merchants whomever, shall be at liberty, shall pass into Galicoun to fetch wares; and that the Galicouners, and other aliens, may import wares from the King, that it may be lawful to him, whomever it is adjudged by his Council, to restore of this statute, to his full grace in law for the profit of him and his Common.

This is expressed to be an Act of Grace, and contains a proving of the King's ancient prerogative, 18 H. VI. *cap. 3.* which I before mentioned: for liberty of exportation of butter and cheese, expressly gave the King's right, provided the King may refrain the same when it shall please him.

To pass by many ancient Statutes of like nature, the Act of tonnage and poundage, 12 C. II. which gives liberty of exporting divers commodities, which the Kings of England might in all times prohibit, as to gunpowder, arms and ammunition, expressly gives the King's right, to prohibit by Proclamation.

§ 7. *cap. 6.* which is the largest licence for foreign trade that was ever given to any Englishman in Parliament, by opening of the trade to Spain, Portugal, and France, and the dominions thereof, fully proves the King's prerogative in this matter, both in the rule and body of the Act.

The title of the Act is, *As the King doth enable all his Majesty's loving Subjects of England and Wales, to trade freely into the dominions of Spain, Portugal, and France.*

A very improper Title, if so be the King's Subjects were before enabled to do it, and had a right to do it by the Common Law, as is pretended, and would not be restrained from it by the King.

And no doubt can be made, if such right had been, but the Parliament would have seen it, being very inquisitive at this time into all the Subjects rights, and very jealous left any of the ancient rights of Englishmen should be invaded by K. James coming from another Nation, and would not have complimented the King with the title of an enabling law.

The reason from the body of the Act is fitting; the reason offered for such general liberty are only policy, none drawn from the right or any ancient usage the English could pretend to.

The Act in its several clauses, That by the Letters Patent for incorporating this Company to trade into Spain and Portugal, in which their Subjects were employed and disbursed from the free enlargement of ancient traffick into those dominions.

Which were not true, if the other Subjects had before a right to trade there, but the patent would have been void against them.

3. There are no declarative words of any former right, but only of enabling, and pre-fusion for a future liberty, viz.

That it shall, and may be lawful from henceforth.

4. The Act, in express words, provides only against the mischief and inconvenience which may grow or redound upon the Patent, and to remedy any injury done by the Patent.

5. The liberty granted, is restrained to be in such sort, and in as free a manner, as was at any time accustomed since the beginning of the King's reign, and before the late Charter of Incorporation.

Whereby it appears, that the usage to trade freely into these Countries without licences, was but from the entrance of K. James;

The Statute referring to no other free usage: And therefore this Act did not over-throw any Charter granted by Queen Elizabeth, as was afterwards declared in the next Parliament, 3 J. *cap. 9.* in the case of the Charter to the Merchants of Exeter, for the French trade granted 2 Ed. which I before mentioned.

Officer. 4. Thus all Acts of Parliament which grant licence of trade, do suppose the other foundation of foreign trade to have continuance, viz. according to leagues with foreign Princes.

For no Act of Parliament ever gave licence to trade with aliens not in amity, and if the league be determined, the liberty is suspended, till granted by Parliament, till the league be renewed.

Officer. 5. The last thing I shall observe upon the laws that give licence of trade, is, that where liberty of trade is given by Act of Parliament, without any reservation to the King of his ancient right, the King in such case hath no bound up himself, that he cannot generally prohibit or refrain that trade wherein he hath granted his Subjects an interest by a law.

For a general prohibition or restraint would amount to a repeal of a law, which the King cannot do without an Act of Parliament.

The law will be the same here as in the cases where Acts of Parliament do generally prohibit, where general licences would be void, because they tend to repeal a law.

Upon this ground the licence in *Dargy's* case, for that past which concerned the importation of foreign cattle, was judged void in law, because too general, not limited to any certainty.

But the King may in particular, and certainly, dispense and licence against prohibiting Statutes.

And so he may in particular refrain the persons of his Subjects from going beyond the seas, notwithstanding any of the laws which give licence of trade:

But cannot grant a restraint or prohibition generally, where Acts of Parliament have given a general licence, unless it be in special cases; and for a time, where the interest of the Publick requires it, as of the plague, and furnishing out of the King's Navies, in time of war with any Prince. And therefore I shall admit, that if any publick law can be produced, which gives liberty of trade for all the King's Subjects, to the Judges, that that Patent will be void, as a restraint of that liberty against law.

Upon this ground the *Conary* Patent was held void, because against the express liberty granted by 3 J. and thence forced; or of the Common

Law Monopoly, by restraining the right of others against an express law, for the benefit of a few.

Upon the same reason, the *Great* of Ph. and M. p. that all sweet wines should be landed at Southampton, was against several express Statutes, and the rights of several free ports, before granted by the Crown to the City of London, and others, as 27 Ed. III. *cap. 6.* whereby by sea-chauffin-freemen had liberty granted to bring their wines to what Ports they pleased; and 23 Ed. III. whereby the English, Irish, and Welsh, had liberty granted to fetch their wines and bring them to any parts of England, Wales, and Wales.

And therefore was repealed in Parliament at 5 J. 2. *Robt. 2. R. p. 122.* whereby it appears, that the Parliament in the Queen's time, was vigilant enough to take notice of Patents against law.

The like in the case of *John Pandey*, for the sole selling of sweet wines by retail, 30 Ed. III. the Parliament set it aside, as against law. Upon that Grant an Inhibition under the Great Seal, issued, prohibiting all the Citizens of London to sell foreign wine in the City. The Inhibition was reversed, 30 Ed. III. *Nr. 13.* and Pandey punished for contumacy, by colour of the Grant, 30 Ed. III. *Nr. 23.*

This Grant was not against any express Statutes, some whereof have been cited in the argument in this Case, which gave the Merchant-Importers liberty to sell their wines and Merchandise to whom they pleased; and many express Grants to the Citizens of London, to whom they were confirmed in Parliament, but was against the rules of the Common Law, being a restraint and monopoly of an inland trade, as a thing of wines in London and other parts of England, unreasonably then was.

For when foreign Merchants are brought hither, to trade or traffick with, they fall under the rules and government of the Common Law, and the restraining of them here becomes an inland trade.

In *Leachard*, 4 Ed. III. *Ad. 29. fol. 27. Pl. 31.* it was ruled, That when foreign Merchants are brought in, a conspiracy to enhance their price is punishable.

At Common Law is like manner, as a design by false rumours, or otherwise to double the price of our inland commodities.

The making of these cases, which were the principal pillars to support the argument of the other side, prove nothing, yet so clear, till they can prove from clearer Statute than 15 Ed. III. the giving liberty of trade to the English Indies.

Having considered of foreign trade with aliens in error, and how it hath been managed in all times, I proceed in the last place to consider what the law determines of trade and commerce with alien enemies, in consequence with Infidels. Here the consideration is far different from what it was in the former; in that, the Common Law was silent, until an express Prohibition by the King.

But here the Common Law is a Prohibition of itself, and is at open war with alien enemies.

Whosoever the commerce with alien enemies without licence, be within the extent of aiding and comforting the King's enemies beyond the seas, within 25 Ed. III. I shall not at this time argue. But it may be worth while for the interpleger who traffick into foreign Nations, not in amity with the King of England, without licence, well to consider what penalty, but before the Statute at Common Law, it was criminal.

Page. 13. *Ed. III. R. 13. B. R. in the Treasury*, in an information against three persons for trading into Scotland, then in amity with the King of England, the Defendants pleaded a licence from *Cardinal Beaufort*, as the Masters of Scotland, which was held ought, since could not be by the King, thereupon they obtained and pleaded the King's pardon. *Rolls Perpetual, de Curia Regia. 133. Pl. 3.*

I need not labour to clear a point which was not applied by the Defendants' Council, but their endeavour was to exempt Infidels from being enemies; wherein they have a difficult task, in losing against the favour of the laws of all Christian Countries.

In the great Infidelity of the Jews, who have been expelled, and their estates seized, as of enemies almost in every Christian Country;

They call for authorities, but give none themselves; not so much as the opinion of any one learned man, as for consequence to the last army between the English and Infidels. I will not detract the memory of the Court to repeat the authorities which have been produced to afford the enemy between Infidels and the laws of this Realm, which are more than sufficient, after such solemn proceedings against the Jews in *Edward* the 1st's Reign.

All which have received a very short answer, that their Records are obsolete.

That none hath hid the Law from us, so that we cannot distinguish whether they were Acts of Law, or Acts of Violence.

And that the reason why Princes were advised to use them so, might be, because they are under no government to vindicate them.

But why the Records should be so darkened, and the Proceedings, in so eminent a case as that of the Jews, to obscure, since Edward 1. more than the Common Law, in the division of the right and properties of others, I could not bear any good opinion given.

For I take it, the principles of law upon which the Jews were proceeded against, are as clearly laid down in our Law-Books, as any point of Law we have.

For the sake of the Jews flood thus: They came over as Merchant-men, of several Countries in amity, both by civil liberties of several Kings, and under the general free-conduct of *Alfred* Char. whereby they were under the King's protection, and enabled to create all and sell, as any other Merchant-Strangers under free-conduct, which the King might grant, as I have shewn, to an alien enemy. While here, many of them were indoctrinated, others born here, and had great possessions of lands, as well as leases and personal estates.

Then they were banished by the King, by Proclamation, as well those that were never indoctrinated upon the account of their religion, as Infidels and enemies to the Christian religion.

To whom then will their lands, sales for years, credits, and such personal effects as they had not liberty to carry out, belong?

The Law adjudged it all to the King. And the controversies that arose about their estates, did not fall out between the King and the defendants Jews, as the Defendants' Council terms them; he they were gone; but the King and several Doctors of the Jews, who well knew the Law, and were all defended their right.

And the liberty to trade with foreigners in unity, was but a bare privilege, and the King prohibited.

Secondly, The other ground insisted on was, that all ingrossing of merchandise was unlawful at Common Law; and therefore a Patent tending to authorize an unlawful ingrossing is void, as a Monopoly at Common Law, and declared to be by 21 Jac.

Here I will join issue with Mr. *Pelteson*, and do admit, that if it be an unlawful ingrossing, whether by the Common Law, or any Statute in force, the Patent will be void.

And he must admit unto me, that if it be no unlawful ingrossing, it is no Monopoly at Common Law.

As he did in his argument ingeniously admit, that if it were no Monopoly at Common Law, it is not within the Statute 25 Jac. 1. in it the question between us will turn upon this single point.

Whether the ingrossing the foreign merchandise of *Indies* be unlawful?

Upon what I have already said, it appears it is not. For I have shewn that the Common Law regarded, and made provision only for, merchandises within the land, and though when foreign merchandises came thither, they fell under the rules of the Common Law, yet the ingrossing, or sole buying of foreign commodities beyond the seas, and selling re-gross, or by the Merchant-Importer, was no offence at Common Law.

Neither is there any statute that makes it an offence at this day.

It is true, the Statute of 3. E. III. cap. 5. prohibited English Merchants to buy foreign merchandises.

But the Merchant-Stranger was not bound by that Law; and that Statute was the next year repealed, as to the *Export Merchants*, 28 E. III. cap. 2. And that at present the Law is, that any Merchant may buy in gross, and sell in gross, appears by the resolution of all the Judges, *Mich. 23. 24. Elix. 6. 7. 1691.* in the chapter of ingrossing.

And the resolution goes a step further than the Merchant-Importer.

That any person may buy in gross of the Merchant-Importer, and sell by retail.

And it follows by a clear consequence, that if English Merchants in such places, where by Law they have a right to trade, may ingross the commodity of the place without offence, the ingrossing foreign commodities of any place, where the subject cannot trade without licence, can be no argument to invalidate such licence.

Because ingrossing of foreign Merchandises by any Merchant-Importer, is no crime, but lawful for every trader.

And then the consequence of all ingrossing will be the raising the price of the commodity.

Yet it being a commodity of foreign growth, and not such as the Law hath any where determined necessary for the support of life, as victuals and such like.

The Common Law hath no regard to the price, but leaves the Merchant free to make his advantage of his dangerous adventure.

The advantage that some subjects may receive by the trade, and others may be debarr'd from, which are alike hazardous, and depend upon a multitude of accidents, are no measures of right or wrong, to put a legal judgment upon.

But if the Company have a right to trade, and others have not, as I have argued, whenever their advantage may be, which cannot be estimated till they have found out their bottom.

The ingrossing of the *Indies* commodities cannot be inflicted with the taint of a Monopoly, which always supposes something done against common right, which is altogether inconsistent with having a right due to the King.

For it is not the essence of a Monopoly, according to the definition thereof proposed by Mr. *Pelteson*, and taken out of my Lord Coke, viz. that it tends to restrain such liberty and freedom the subject had before, or to hinder him in his lawful trade.

So that every sole buying and selling a commodity, if it be lawful, can be no Monopoly, as the legal trade of the wool, which is evident in several kind commodities, where the sole buying and selling is coupled with a right.

The King may grant to form his pre-emption of this, whereby the Grantee hath the sole buying and selling, if he please, of the whole commodity.

Such a grant to *Tindus* a foreigner was complained of in Parliament, 21 E. III. and prayed by the Commons, that no such merchandise be sold, but to the commodity of Merchants.

The King answers, that it was a profit belonging to the Prince, and every Lord may make his profit of his own; 21 E. III. see 10.

That this sole right of buying and selling was ever enjoyed, appears by the case of the *Statutes*, 4. 7. Ch. 12. fol. 10. & c.

So of all gold and silver dug within the Realm, and of all royal fishes taken by the King and his Grantees shall have the sole disposal, or right of selling them.

It is no just answer to these instances, that they are inheritances and rights vested in the Dukes of Guise and the Crown:

Which they may dispose of when they please. So is his prerogative of licensing foreign trade. And as to the question of a Monopoly, which import is a wrong in nature, the rights of others, there is no difference between having a right ceiling, which may be granted, and having a power or prerogative to confer a right on others.

For to the having the right to do the thing that makes it no Monopoly.

And therefore, if the King have a right to license some of his subjects to do a thing, which other of his subjects cannot do, or are rightfully prohibited to do, whether the thing granted were before it *ex officio* considered, it is all one to the validity of the Grant. This is proved by the instance of Fairs and Markets.

Whether anciently in the Crown, or *de novo* created and granted to any subject, the sole will be the same, as to the subjects sole right of holding the Fair and Market exclusive of others.

And rights conferred by the King's prerogative, are every where as strong as any rights granted out of the Crown, which was before in *officio* there.

So that the Petition of an unlawful Ingrossment and Monopoly being removed, by Mr. *Pelteson's* admission, 'tis not within 25 Jac.

And it is plain, it is not within the words of the concluding part of the Statute, without the aid of the Proviso, for it is expressly limited to grants made, or to be made, for the sole buying and selling, or using of any thing within the Realm. So that it was only the liberty of the inland trade and traffick, so which the subjects had right before, that was fenced and secured

by this Statute. And this Petition is not the sole buying of a thing within the Realm; and the reason thereof, be here, yet such sole selling was, as in wool, notwithstanding any new or Statute made, as I have shewn.

And the Lords were only so, to manifest the plain intention of the Parliament, not to interfere with any just prerogative of the King, which he might, and lawfully had exercised and used for the benefit of his subjects.

Besides, to put it still all single, this Company is within the express words of the Proviso.

It was a Company in the reign of Queen Elizabeth and King James, as is noted in the 6. charter.

And by their Charter 7. Jan. had the sole trade granted, with the exclusion of others.

And if the Parliament had not adjudged this Company to be for the maintenance and enlargement, or ordering of that trade, as well as the other Companies, they would undoubtedly have made a difference between them, as in that Charter of 7. Jan.

For our very Parliament was inquisitive into all illegal Patents, which in the last session it towards a Monopoly.

And if they had thought that Charter such, they would not have borne trouble of the point at that time.

Ingrossing made for the different managery, by joint and separate stock, is a crime, as it is right, because it touches not the question of right, who are a Company may have a sole trade granted, exclusive to others.

For every Company draws a charge with it, which those not of the Company are not liable to.

And if the subject have a right to trade without being of the Company, he can be no more compelled to be of the Company, which manages and trades upon separate stocks, than of one which trades upon a joint-stock.

And the objection, that ordering of trade within the domain cannot be intended of licensing of force, with exclusion of others, is of no greater force, 'tis so could not be intended of any other.

All the Patents for foreign trade before that time, and then in being, were Patents of exclusion of others than the Company.

And if it be well considered, all the authorities that allow these may be Companies created for well-governing and ordering foreign trade, do admit, they may be exclusive to others.

It is not being possible that a foreign trade can be under any rule or government, by any Letters Patent whatsoever, if carried on by persons not subject to that rule and government.

And it is evident, that no rule of any Company binds farther than those of the Company; and if every man, not of the Company, may trade, such trade will not be under any rules made for the Company, or by the Company.

So that such Patent will be only for keeping some few persons within rule and government, but not to all of the foreign trade.

Which of necessity must produce the ruin of the Company, and in all probability of the trade itself.

For if others trade without limitation, discharged of all the rules of the Company, and not be liable to the charges and expenses, whereby the trade must be supported; they may and will both undo the Company, and themselves, and mismanage the business, than which nothing can tend more effectually towards the destruction of a trade, of that great concern both to King and Kingdom.

Besides, the Patents and Stock of the Company in foreign parts are absolutely and liable for all injuries committed, either to the Natives or Government of the place, by any Intelliger trading without rule, by the general Law of reparation.

I will not further pursue the arguments of convenience or inconvenience, but do rest upon the right, which I have endeavored to make out by these steps.

First, That the subject had no right to this trade at Common Law as a foreign trade, but might be prohibited.

Secondly, That no league or royal licence hath introduced or given such general right.

Thirdly, That foreign trade hath in all times been licensed and managed by the undoubted prerogative of the Crown, in licensing force, and prohibiting others. And that in all cases not provided for by Act of Parliament.

And that such Grants and Licences have received allowance in several Parliaments.

Fourthly, That no Act of Parliament ever gave a general liberty of trade, much less to trade with Infidels.

Fifth, That the Common Law prohibits this trade with Infidels, as with Asian Enemies.

Sixthly, In the last place, I have applied answers to principal authorities and arguments made use of to impeach the Company's Patent.

Upon all which, I conclude the chief point of the case.

First, That the Grant to the Company, of the sole trade to India, exclusive to others, is good in Law.

Secondly, As to the second point, whether the said will be, admitting the Company have a right to the sole trade there, by their Letters Patent,

I shall spend but a little of your time about it.

Because if the Company have by Law the sole right to the trade, the Law will give them a remedy to redress injuries done to their trade, for recovery of their damages.

Which is properly by an action of the Case, they having no other remedy to redress themselves. For a prosecution for a contempt to the King cannot be in satisfaction of the Company's damage.

I shall therefore rest that point upon the authorities already produced by the Plaintiff's Counsel.

I shall only apply answers to the objections made by Mr. *Pelteson*.

Obj. 1. 'Tis not alleged the Defendant had no licence from the King.

Ans. The Complaints case is sufficiently set forth, that they had the sole trade to the *Indies* granted to them; and that the Defendant had notice thereof, and yet traded contrary to their Grant.

If the Defendant had had the King's licence to come on his part by Plea, then the validity thereof, as against the Plaintiff, would have come into question, but he relies upon the licence, by Statute of 15 E. III.

Obj. 2. They have shewn no special loss or damage.

Ans. Neither need any be shewn, no more than in all other actions of the case, where the right of any person is injured, 18 R. 2. *Mary's case*.

of a Commerce who hath no share in the trade, nor the sole right in the profits thereof, comes not to the case; he denies such Commoners licence of bringing his wares, without a special licence, to prevent a multiplicity of actions, which upon the same ground every Commoner would be intitled to.

But otherwise it is, where any hath the sole Privilege or Profit thereof; after letting forth the special case, and wherein his right is intitled, a general declaration to his damage is sufficient, and the examination of the particulars will belong to the Jury.

Obj. 3. That the action is grounded upon the refusal in the Letters Patents; and that refusal is not absolute, but upon pain of forfeiture of Ships and goods.

Ans. The first part is sufficient; for the action is grounded upon the grant of the whole, entire and only trade and traffick to the Indians, inforced with the King's command, not to grant his no, or any others.

And besides this clause of the prohibition, there is a distinct clause of Grace, that none of these countries or places shall be visited, imported or burdened by any of the King's subjects, during the continuance of the Patent, which hath no penalty annexed to it.

Upon these Grants the action is grounded; and if there were no clause of prohibition, the trading to these Indians by others without licence from the King, is enterprising a trade not only against the prohibition of the Common Law, but the King's express prohibition.

But the action is not founded upon this clause, but upon other clauses of conferring a right to the sole trade.

The authority cited by Mr. Pollexfen, as an authority in point, against the action out of *Ex Reg. 38. and R. v. Darcy*, *fol. 106. no. 6.* in *Darcy's* case, that admitting the grant or dispensation to *Darcy* were good, it is surmounting *Statute* *Cap. 5. touching the Statute of Ed. IV.* yet the action would not lie, because no one case of a right conferred by the King's prerogative, and not of any dispensation from a penal law.

But the Statute of *Edw. VI.* every Subject might import foreign Goods; the Statute intitles that liberty under penalty of forfeiture.

The difference of one Subject from the Law, works no latitude but a bare exemption from the penalty.

Which is the case of *Shaw and House*, was held could not be assigned over; and therefore Grants that are merely dispensations, convey no interest against any other Subject, who is no otherwise restrained from doing the thing, than by the Statute under a penalty.

But where the King by his prerogative may grant the sole use of a thing, (as in case of new Inventions) the Grantee hath an interest sufficient to support an action upon the case, as *R. v. Innes* is of opinion. The next paragraph, *fol. 106. no. 17.* That if the King grant that none shall use such a thing (whereof the King hath power to grant), but the Grantee, receiving a rent, if another use it, an action upon the case will lie.

Which is a stronger authority in point for the action, than that of *Darcy's* case of a mere dispensation, is against it.

And therefore having proved the Grant of the sole trade to be good, the action is well brought for damages.

And pray Judgment for the Plaintiff.

Mr. Williams's Argument.

Determines S. Michaelis, *Asses Regis Regis Cas. Sessis XXXVI. Asses;* Decree 1684.

The East-India Company against Thomas Sandys.

THE Questions in this Case, are two.

1. Whether this Grant of sole trading to this Company, excluding all others the Majesty's subjects who are not members of this Company, or within the qualifications of this Grant, be a legal Grant?

2. Admitting it a legal Grant, if this action be maintainable by the Company against the Defendant?

That this Grant is legal in all its parts, I do not find that the Counsel that argued for it, have endeavoured to maintain.

Mr. Attorney hath admitted in his arguments, it is not.

Those parts of it are against law, is manifest, viz. it intitles illegal penalties upon persons offending against it, by creating a forfeiture of their goods and merchandize, which shall be brought into the Realm, or any of the dominions thereof, contrary to this Grant.

It also creates a forfeiture of the Ships, with the furniture thereof, wherein such goods shall be imposed or found; the one half to the King, the other half to the Company.

It grants, That the offenders against it shall be imprisoned during the King's pleasure, and not to be delivered out of prison until the offenders become bound to the Governor in the sum of 1000*l.* at least, that such person shall not at any time after sail or traffick into any places mentioned in the Grant.

It gives the Company liberty to license persons to trade within the limits of the Grant; and that the King, his heirs and successors, shall not, during their Letters Patent, license any person to sail or trade there.

In these things the property and liberty of the subjects, are put into the power of the Company; and they are to dispose of the liberty and property of their own Company, and not the Publick.

If it is Company may seize Goods and Ships, and imprison the King's subjects, according to their Grant, they will have a greater prerogative over the subject than his Majesty hath; they have power to seize goods, and imprison persons, without trial, without legal proceeding, which the King cannot do, and I humbly conceive, cannot grant to any subject or corporation.

The judgment upon the *Cassary Patent*, which I shall have occasion to mention in my Sermon, by the opinion of all the Judges, denied the goodness of that, agreeing in substance with this. The substance of this was admitted, at least not defended, by Mr. Attorney General.

The Grant is not only given to the Company dominion over the publick and whole bodies of the subject, and invest the Company with the prerogative of the Crown to license men and things to trade in these limits, but it deeth off the Crown, the King, his heirs and successors, of a high prerogative; that the King shall not license, as I take it, the King shall not trade in these limits without the licence of this Company. For

as this great and mighty Charter is passed, it doth not only invest the Company, but direct the King of his prerogative.

Mr. Attorney and the King's Council could not argue if the Company in this matter, without arguing against the prerogative of the King. They are of the King's Council that argued for this Grant, but 'tis not to be believed they were of the King's Council, or friends, that drew it or advised it.

We that argue for Mr. Sandys, argue for the King's prerogative; That the King, notwithstanding this Grant to this Company, may license Mr. Sandys, or any other subject, to trade in these limits; and it doth not appear upon this Record but Mr. Sandys hath the King's licence to trade in these places; he may license any other subject to trade there.

And that the King by this Grant cannot exclude himself of his prerogative.

It will serve our turn, for the defendant in this case to avoid the plaintiff's action. If the plaintiffs sought out by law to have the sole licensing of traders in these limits; for the Kinging part of their declaration is laid in this, *That the Defendant traded without their Licence.*

There was greater care had to restrain this Company, than to preserve the prerogative of the King in this Grant; and the prerogative is named in this case, to have the Company, and not the King; and they that drew this Grant, did neither consult the honour nor prerogative of the King, the liberty or property of the subject, the trade of the Kingdom, nor the law of the land. But their business was to restrain this Company, to the detriment of the King, the Law, and the Subject, as I hope to make out in this case.

In my way to the particular Questions in this case, I shall observe, 1. That the plaintiffs in their declaration do allege, That they have a right and intitled, and do manage a great trade of merchandise to the East-Indies, and the inhabitants thereto, who at the time of the making the Letters Patents, were not, and now are not Christians; but then were, and now are infidels, and enemies to the Christian faith.

Yet they do not allege, nor can say that these Indians are in amity with the Crown of England, or that they are alien enemies to England.

2. That the profits inhabitants of these places are infidels, and enemies to the Christian Faith, yet it may be, and we hope there may be an universal conversion to the Christian Faith; and we are taught by the Church so may it, and to all manner of means to bring it to pass. Why may not these places, or some of them, become inhabited with Christians, as Spain and Portugal are now inhabited by Christians, where infidels did inhabit about 200 years ago?

3. This Grant doth not exclude a trade with infidels only in these places, but with all persons in these places.

I do not observe, that any of the Company's Counsel that argued before Mr. Attorney, have denied Englishmen the liberty of trading with Christians in any part of the World, without licence from the King. Herein I take time to be alone.

4. They say, this trade cannot be managed but *per corpora incorporata*.

Yet hath they an exclusion of all persons, and bodies politic and corporate, to trade, or manage a trade in these places without their licence; and by this means exclude the King from constituting any other Company within the limits of their Grant, or in any part of it, which may be very necessary for the Government, and publick trade of the King.

5. It may be, the Indians may still upon some such Company to be instituted by the King, by some treaty of commerce.

Now hath the King by this means, not only excluded his subjects from the trade of this Place; but he hath excluded himself of the liberty of making or constituting any other Company for trade or commerce, in all, or any of these places.

6. Perhaps the government and good management of trade in these places, may in time require more Companies to be instituted, in all, or some of these places; and the Company's Counsel, except Mr. Attorney, are now arguing the King by his prerogative, out of his prerogative.

That the King hath prerogative enough to make this his glorious Company the sole traders, and managers of trade in these places, and to exclude himself and his successors, and all the rest of his subjects, from this trade and management.

7. And by this means constitute a sort of Republick for the management of trade in these places, borrowing perhaps from *Hamborough* and other republican places, the ways and methods of managing trade upon a common stock, in fraternities and companies; and by this experiment alter the constitution of England in the management of trade, by allowing the nature of our English properties in our goods vested and placed in persons, and placing our properties in companies and fraternities; and by fixing the mystery of trade in companies, to the prejudice of single persons; and may in time turn to ill example, and endanger the Government in its other parts, as well as in this of England.

The main question in this case doth turn upon the power of the King; If the King by his royal power may appropriate this trade in these islands places to this Company?

First, That the King hath power to do this, by the advice of his great Council, the Parliament, is not doubted. So there is no defect or want of power in the King to do this by the Law of England; the exceptions to the Statute of 21 *Jas. 1.* do. 3. do except such Grants out of that Statute.

The question is only a question of the manner of doing this by the King, *Sandys*. Whether he may do so, without the advice of his great Council, or Parliament?

As there is no defect or want of power in the King, so there is no defect in the Law of England.

Thirdly, But if there be a necessity or a convenience to the doing of this for the Crown, or for the government, for the subject or for trade?

Fourthly, It is not to be supposed but that the Lords and Commons in Parliament, will and ought to assent to such a Grant in Parliament as much as the Privy-Council, or any other of the King's Council, are obliged to assent to out of Parliament; and it ought to be so promoted by the constitution of England.

And I take this to be one of the *Archieps Regni*, which is a subject matter fit and proper for the consideration and deliberation of a Parliament, and ought not to be passed by any Grant without these.

The trade of England, the property and liberty of the subject, the King's revenue by Tonnage, Poundage and Customs, the prerogative of the King, are under great redressions by this Grant.

Obj. That they are excluded only from trading in the *East-India* with Infidels, and the Inhabitants there, who are enemies to the Christian Faith and Religion.

Ans. That it is for the common safety of the Christian Religion, that this is done to prevent the danger of corrupting and perverting Christians to Infidelity.

I do not meet with any authority for this power given to the King. But that *English* subjects have the same freedom of trade with Infidels as they have with Christians in places beyond the seas; if so they be not to contrary with the Crown of England.

Mishawaka's case, *Bromwich ad Rep.* 296. That case hath been observed already to have no authority, nor the Book authentic, and at best but some saying of my Lord Coke, in a matter not then at judgment before the Court, and that perhaps militate by the Precedent.

I oppose to the probability of this saying, the report of the Taylors of *Wylsham* case, in *Rolls Rep.* fol. 4. 12 *Yeo.* The Lord Coke was then Chief-Justice of the King's-Bench, and says in the resolution in that case, that so trade mechanick or merchantable can be hindered by the King's Patent, not in any place, without an Act of Parliament; a Charter to hinder trade at sea is void.

How can this stand with what is published in *Bromwich*, that my Lord Coke should say in the *Common-Pleas*, before this time, that an *English* subject cannot trade with Infidels, without licence from the King; and that he had been a Justice, in the time of *Edu. III.* to that purpose?

The reason given for that saying, is as weak, because they are common enemies to the Christian Faith.

They may be enemies to the Christian Religion, and not enemies to the Crown of England, or to the trade of England.

The Law denies trade and commerce only with enemies to the Crown, not with enemies to the Christian Religion.

It is sufficiently observed already, by the Council that here argued on this side, that there are treaties of trade and commerce between the Crown of England, and these places of Infidels; and that there are leagues and embassies between them & *Edu. III.* allows leagues of commerce, and trade, and peace with Infidels.

And what may be the consequence, to declare that to be Law, that they are incapable of the benefit of the Law of England, allowed to other Aliens, and that they are not to be protected from personal injuries by our Law?

12 *H. VIII.* 4. A Papin beaten in England cannot sue, *quasi per personam hominem.*

And to put them in the same condition with outlaws and excommunicated persons, how doth this consist with the common justice of Nations, or with the policy of trade as an Island?

Obj. By Mr. Solicitor, 5 *Yeo.* fol. 32. A Jewels born in England, marrying a converted Jew, not allowable.

Mr. Solicitor hath cited many cases and Records out of Mr. Prynne's Collections, and from the *Rolls* themselves, how the Jews were treated in England in trade; what restraints and taxes were laid upon them by the Crown.

I do not take it that any of their Records reach the reason of restraint of trade, imposed upon *English* subjects by this Grant.

There's no restraint but that *English* subjects might trade with Jews in their own countries.

That Jews were used thus in England, is no argument that the *East-India* Company may use *English* subjects like Jews abroad in other Countries.

St. Paul's 2^d Epistle to the Corinthians, chap. 6. reprehends the Christians for going to Law one with another before Infidel Judges, who were their enemies; calling it a fault, and he speaks it so their shame, that they would not rather receive wrong, or make Arbiters of their own to judge between the brethren, than to go to Law one with another, and that before unbelievers; but there's no reproach to the Christians for converting or trading with Infidels.

4 *Yeo.* fol. 155. *Derry and Allen's case*, *Morr's Rep.* fol. 674, and 675. are Authorities for leagues and commerce with Pagans, which signify leagues of commerce with Infidels.

Lord Coke cites several words out of the holy Writ to justify it, out of the Books of *Ysaiah*, *Rygs*, and *Jerusalem*.

If it be true, there is a full freedom of trade by the Common Law for all *English* subjects with Infidels and Christians in all parts of the World, and that without licence from the King?

To restrain this freedom of trade to a Company of *English* subjects, excluding all others the King's subjects from their ancient liberty and freedom of trade, I take to be a Monopoly, and comes within the description and reason of the unreasonableness of Monopolies, so largely argued by Mr. Pollock, that I shall not take up the time of the Court in repeating what he's said, and I cannot add to it.

Neither will I trouble the Court with mentioning the authorities he hath cited for that purpose; but refer myself to the same authority in that matter.

Yet I take it, under consideration, that it is fit to be very well considered, if this Patent be not a Monopoly, and an ingrossing and appropriating of trade to few persons, which did belong and was common to all *Englishmen*, though a licence from the Crown was necessary for their exercise of this trade; yet every *Englishman* was capable of such licence, and was intitled to such licence from the Crown, and had a right to it.

Now hath this Grant put it out of the King's power to grant such licences, and hath placed this power, and the exercise of it in this Company, and by this means hath by this Patent granted and appropriated a trade to this Company, which was common to all his subjects, and hath given to this Company the sole licensing of traders in their parts, excluding all the subjects of England, which shall not be licensed by this Company, to trade in these parts: I conceive that makes this Patent and Grant illegal and void.

And makes this restraint in trade, which was common to all with the King's licence, now peculiar to this Company; and doth monopolize the trade and the means of trading, by placing it in the sole hands and power of the Company, even the sole licensing of traders, and they may by this Grant benefit Aliens only to exclude *English* subjects.

My Lord Coke's description of Monopolies and Monopolists, Projectors and Propounders, doth sufficiently illustrate this, with reflecting upon

what Mr. Pollock hath said in his arguments, without repetition of them to the Court.

The Statute of *Almog Charles* declares the liberty and freedoms Merchants have to buy and sell without restraint, by the old and rightful customs, except in time of war.

2 *Yeo.* cap. 29 *Ed. 3.* Stat. 9 *H. III.* 30. *Nisi publicus praedicator*, hath my Lord Coke, is intended a prohibition by Act of Parliament.

Wolton, 10 *Yeo.* is of the same opinion with *Lord Coke* in his book about impositions upon trade; as I have it from a Gentleman in our profession. *Vide his Manuscripts.*

21 *Yeo.* cap. 3. declares all Monopolies to be against Common Law.

Cap. 11. *Case of Monopolies*, 84 *Morr's Rep.* 673. says, *Dary's Grant* for the sole importing of Cards from beyond the sea, and selling them for twenty-one years, 44 *Edw.* prohibited and judged a void Grant.

Sist. 2 *E. III.* cap. 2. confirms *Almog Charles*, for selling and coming with merchandise to and from England, according to *Almog Charles*.

9 *E. III.* cap. 1. damns all Charters to the contrary, as illegal and oppressive to the people, 4 *E. III.* cap. 2. confirms also *Almog Charles*, 25 *E. III.* cap. 2. doth the same, and makes *Lesters Patent* to the contrary void.

18 *E. III.* 6. 12 *H. VII.* 6. for five passages, &c. *See Letters Patent* restraining trade have been purified in Parliament, with here and cry, in all Parliaments and Ages.

Obj. This Grant is made to a Company for good government, and for the ordering of trade, and no Monopoly, and it is within the Privilege of the Statute 21 *Yeo.* cap. 3.

Ans. Allowed in *Dary's case* by the arguments for that Grant, and if it be not for public good, the Grant is illegal.

If this Grant be neither good for the King, nor for the subjects, nor for the trade of England, it cannot be said to be for the public good.

It cannot be good for the King, for it restrains him in his prerogative, as you would have the King had power to license every subject; by this Grant he hath excluded himself of all power of licensing. He can license no subject to trade in these parts.

The King suffers in his Customs and in his Navigation.

The subject is excluded from trading in these places, without the licence of this Company.

Trade itself is restrained, for it is reduced and appropriated to a Company, and to few persons, which was common to all the King's subjects.

2 *Yeo.* fol. 57. *Lord Coke's* reason against it, for all the subjects are concerned in trade, therefore all ought to consent to it in Parliament.

That they are a Company, they are not constituted by this Grant, to regulate and manage trade for England, but for themselves and their Company.

The brightening, the lowering of commodities, the raising, the lessening the rates of all the commodities of these places, the ingrossing of all the trade of these places, is in their power and in their pleasure.

There are no rules or qualifications in this Grant, intending to admit numbers into this Company, or directing or requiring their licences for this trade. They have the trade in themselves, without any check or control from his Majesty or the Government; they are independent from the Government by this Grant, they are without appeal.

Obj. That they are a Company, and that this Grant to them is within the exception of the Stat. 21 *Yeo.* cap. 3.

Ans. 1. Because that exception does not reach to *Lesters Patent* made to Corporations, after the making of that Act.

No words are saying to any Corporation, that should be afterwards created or granted.

2. This *Privilege* does not make them better than they were before the making of the Act, only leaves them as they were before, and as it found them.

If they were legal before, they continue so; if illegal, they are so notwithstanding this Act.

Obj. That many Grants of this nature have been made to several Companies, to the *York Company*, *Molay*, and *Hemmergham Companies*.

Ans. They do not trade in Joint-Stock, and monopolize, as this Company doth; they do not exclude persons from their Company, as this doth. Mr. Pollock hath discovered them at large.

That there have been many Monopoly Grants in all Ages from the Crown, appears by the Statute of *Almog Charles*, by other Statutes made in *E. III.* the time, *R. II.* VII. and *King James's* time; and by the judgments given on Monopoly Patents in all ages.

In the case of Monopolies. In the Taylors of *Wylsham* case.

Peashy's case, 5 *E. III.* severely punished for procuring a licence under the Great Seal, that he only should sell Sweet Wines in *London*, &c.

15 *Yeo.* fol. 191. *Derry and Allen's*, *Morr's Rep.* 44 *Edw.* Oppression is older than the Law made to punish it. Monopolies are as old as the Laws made to restrain them; it is no argument to justify injuries by their age.

St. *Arthur Aquinas's* Patent, 37 *Car. II.* for the Company's granting them the sole trade there. There are glorious records in the Patent, of advantage to the King's subjects, and for the regulation of trade, making the Company a body politic, that they should have the sole trade to those Islands, excluding all others under pains and forfeitures, with a new addition to the Statute against Monopolies; Judgment was given against this Patent, *Mish.* 20 *Car. II.*

18 *Yeo.* fol. 54. Taylors of *Wylsham* case. Compare this case with the Company of *Taylors case*, for the good of Trade and Company, and the Charters and By-laws fair and plausible, yet damned, because a restraint on trade.

The Company had the profit of the reformation. No other difference between the cases, than that this is a mighty, that a petty Company.

14 *Car. II.* cap. 24. That Statute provides, that persons by having Stocks in this Company, shall not be adjudged traders within the Statute against Bankrupts, which is called by Mr. Solicitor the Judgment of the Parliament for this Grant.

Says Mr. Solicitor, *Stat. 14 Car. II.* cap. 24. takes notice of this Company, and that it is an advantage to the Nation and Trade of it.

Sist. 19 *Car. II.* 1. takes notice of this Company, and takes every Capital stock in this Company at 20s. for every 100s. Capital Stock in the Company.

Ans. This *Poll-Act* taxes all Guilds and Fraternities, Bodies Politick and Corporate; it does not make them legal Corporations, Guilds or Fraternities.

The judgment the Parliament of this Grant doth better appear in the Journals of the House of Commons, of the complaints made to the Parliament, that this grant was a grievance.

And on new thing to mention proceedings upon Journals of Parliament, and the Judges take notice of them. *His. Rep. & Roll.*

And in a case of this importance it may be proper to adjourn it to Parliament, where it may receive the Judgment of his Majesty in Parliament, and will be a due establishment of the Law in this great case, and concern the King's prerogative, the right of the subject, and of the whole Kingdom in the trade of the Nation.

It will meet there with a Judgment that will certainly establish it, as it be for the Interest of the King and Kingdom; but if for the enlarging of this Great Company, it will meet with the common law of justice, it will stand against the will of the King and Kingdom.

It is a mighty argument for the reputation this Patent had with the Parliament, and the opinion they had of it, by taxing their Capital-Stock at 2000 per Cent.

So they do reputed Equities, at 5 l. by the head. Solicitors, Attorneys, and oppressive Officers have the like esteem with this Act of Parliament.

Stat. 9. Jac. 1. cap. 6. This Statute is but declaratory of the Common Law, and doth not raise questions and suits in Law; which might be otherwise by reason of interpreting the trade of Spice and Pepper, and then seeking for the trade of France.

It is the mischief recited in that Statute, and the evils happening to England, and the King's subjects be here, without all limitation.

These Charters mentioned in that Statute, and reformed by that Statute, were not only grievous, but illegal, and Monopolies.

For monopolizing the trade of their denizens to few Merchants, and forbidding all other his Majesty's subjects from the trade.

And using the King's subjects in England from that free and common trade, which his subjects in Ireland and Scotland had.

To the manifest impoverishing of Subjects, Owners of Ship's, Mariners, Fishermen, Clothiers, Tuckers, Spinners, and many thousands of handicraftsmen.

The decrease of his Majesty's Customs, Subsidies, and other Impositions; The ruin and decay of Navigation.

The raising of the prices of our Wool, Cloth, Corn, and such like commodities.

The enhancing of all French and Spanish commodities, that all Owners and Masters, with divers others, shall be off from the ordinary means of maintenance, and providing their wants.

And all French and Spanish commodities shall be in a few hands.

To the hurt and prejudice of all the subjects; therefore enact, it shall be lawful for all his Majesty's subjects in England and Wales, to have free liberty to trade into, and from Spain, France and Portugal, in such sort as was accustomed at any time in his Majesty's time.

Stat. 4. Jac. 1. cap. 9. Made to confirm the Charter to the Company of East Merchants, upon singular reasons recited in the Act of Parliament, declaring the Stat. 30. Jac. 1. cap. 6. should not impeach that Charter, being for public good.

Stat. 45. Ed. III. cap. 4. That no imposition shall be charged upon Wool as no fort, without the assent of the Parliament. This Stat. was not made out of necessity, for it was the Common Law; yet it was thought fit by the Parliament at that time, to declare the Law by an Act of Parliament.

Stat. 1. H. IV. cap. 16, 17. Against Letters Patent made to ingross trade, &c.

So ancient was the Monopoly, and ingrossing of trades by illegal Letters Patent.

When illegal things turn to a grievance, 'tis usual to suppress them by Acts of Parliament, and not to leave their Judgment to the ordinary Courts of Justice, without declaration first had in Parliament.

Stat. 21. Jac. 1. cap. 3. This Statute takes notice, that the King's Dispositions, Judgment and Declaration was, that all Monopolies were against Law; and that so Statutes should move for such Grants yet upon informations and untrue pretences of public good, many such Grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of the subject, contrary to the Laws of the Realm.

For the avoiding whereof, that Statute is made against all Grants to any person or persons, bodies politic or corporate, of any Monopoly; and declares the same illegal.

This Statute doth qualify with the description of a Monopoly.

So both the East-India Company's Charter in all its points and parts, and in the exercise of it, qualitate with these Monopolies, and their descriptions in our Law-Books and Cases;

With my Lord Chief's description of a Monopoly, in his 3d. *Inst. cap. Monopolies.*

If Mr. Selden be pleased in Mr. Attorney's argument, I take it that East-India Charter is placed in this Statute.

The Act of Tunnage and Poundage, 13 Car. II. says, The Common in Parliament respecting trade and commerce in your Majesty, in and for the safeguard of the seas, against all persons, extending, or that shall extend the disturbance of your Commons, in the intercourse of trade, and the invading of your Realm, give and grant for every Tun of Wine of the growth of France, that doth come into the Port of London, by your natural born subjects, 4 l. to s. by strangers and aliens, 6 l.

It like notice takes of Poundage, to be paid by subjects and aliens.

Stat. 67. Ric. 1. Rates in Wares, Silks imported in Ships English-built, directly from the East-India, the pound weight containing sixteen ounces; Subsidy, 4000. *Stat. 15. 2.*

Of the Manufacture of Wool, imported from ships in English-built Ships, 16 pound weight containing sixteen ounces; Duty 1 l. 10 s. 4 d.

It has also distinguished between Subjects and Alien Importers, between English and Foreign ships, not between the East-India Company only and Aliens. But this Law made for England, be now appropriated to this Company, and the rest of England excluded by this Grant against this Statute?

This Law made for all the King's subjects and their English-built ships. The confirmation of this Statute moves from all the subjects, the Grant is by all, and the benefit sought to be for all the subjects of England.

The Law is the same as to the Transportation from the Foreign to the Importation from India, to which the Company is not now bound.

The Act for encouraging and increasing of Shipping for Navigation, 10 Car. II. the last Law that ever was made, and is now in force, is the same, except the Laws for the prerogative.

The Privilege is in following: Provided that the Ship, or any sailing thereon, be not built, or extended, or be meant to receive more than 100 tons of any English-India commodities, laden in English-built ships, and whereof the Master and three-fourths of the Mariners, at least one-fifth, from the time of their place or places of loading them, in any part of the Sea, from the South-west of England or Coast of Bona Speranza, although the said parts, be not the places of their growth.

This Law made for the increase of English Shipping and Navigation, doth this Company invade, and appropriate the Shipping and Navigation to themselves, by excluding all other English-built ships.

Is this for increase or decrease of English Shipping and Navigation, to confine it to a few hands, excluding many?

There is neither Common nor Statute Law can hold this Company. I hope the Judgment of this Court will bind them; and that the Act of Parliament will prevail against this Company.

The Privilege is, for all English-built ships to carry in all English-built ships, English-India commodities brought into India.

The Charter says, this Company, and the Ships and their men shall carry by carry. Which shall prevail, the Act of Parliament or the Charter? Their last mentioned Act of Parliament differs with between Subjects and Alien Importers, between English and Foreign Ships.

Not between the East-India Company only, and Aliens. Shall the Laws made for England, be now appropriated to this Company?

Shall they have the benefit of it? Can the King's Grant take from his subjects the advantages given by Acts of Parliament, and appropriate to himself what is granted to all?

I move leave to observe four things, by way of answer to Mr. Attorney's pleas and answers to the several questions yesterday.

He distinguishes between inland and foreign trade, he did allow the subject the benefit of a house trade without restraint.

That the Parliament might please.

That one Englishman might privately sell to another by the Common Law, without licence from the Crown.

Yet one subject could not buy, sell, or trade with another publicly in an open fair or market, without licence from the Crown, and this for the preservation of the peace, to prevent public assemblies and meetings: And that as Fair or Market could be kept, but by licence from the Crown.

I think these four things, Markets, and Corporations in England by prescription, and their beginning is not known, and have been allowed by Law.

And prescriptions are compared to the head of Noli, which could never be discovered.

And that such ancient prescriptions are as ancient as the Grants of Kings or Inhabitants in the World.

And for foreign trade He said it down for a position, that no subject could trade abroad without the King's allowance in any part of the Christian World. I do not find any authority for this, practice is against it.

The rest of the Council did argue for the Company did not insist upon it; yet, they did seem to admit a trade for English Merchants with Alien Christians, without the King's licence.

That in regard the authority of E. N. Br. 83. Dyer 265. 266. against Lord Chief's opinion, *Roll. Rep. Taylor of Ipswich, Stat. 1. H. III. cap. 37. Magna Charta, 2. H. III. cap. 9. 18. E. III. cap. 7. 3. E. III. cap. 2. 38. E. III. cap. 2. 5. E. II. cap. 2. 12. H. VII. cap. 16.*

Stat. 18. H. VIII. cap. 10. Stat. 566. which gives the King for a limited time power to license trade and traders in some measure, as some parts, in some commodities. *See the Statute.*

His distinction for Merchants to trade, without coming to the Staple; and therefore to distinguish between Merchants and Traders, who are obliged to come to the Staple.

What warrant have he for this distinction? The Prayer of the Commons to the King in Parliament, the Petitions of Merchants to the King, the King's restraint of Merchants in their trade, notwithstanding Acts of Parliament; the continuing of the Staple, notwithstanding Acts of Parliament; tending to the contrary, give him a handle for this argument.

1 H. V. 7. The Prayer of the Commons to the King, to find foreign Merchants out of the Kingdom: the King's answer, *Roll. Rep. 1. H. V. cap. 8.*

These were Bills in Parliament presented to the King for the royal assent; so were many of the Rolls of their Ages, presented to the King for their royal assent, especially in things which any way concerned the King in his prerogative.

The Commons did not demand their rights in their Bills, but by Position claim their right.

Such answers of *Roll. Rep.* are no argument against the right of the subject.

Neither is the Petition or Prayer of the Commons in Parliament, in any manner that is their due to the Crown, any argument against their right.

That the Statute did continue till lost, by the loss of Calais.

Stat. 4. H. III. cap. 9. That the Staples beyond the sea, and on the side the seas, established by Kings in times past, and the pains thereupon provided, shall cease, &c.

This Statute took away the Staples for all by the Kings.

But there was a Staple for up by Act of Parliament, and reformed and altered by several Acts of Parliament, did continue notwithstanding the Act of E. III.

But English Merchants are not within any of these Statutes, or the meaning of them.

And I do not find that Mr. Attorney gives any account how these Statutes were taken away by Law, but vanished at the taking of Calais, he hath not told at the beginning or ending of the Statute by Law, I know no Common Law for them, or his distinction.

Rolls Are Perpetrated, This Proclamation of 6. 27. E. III. by the Statute of the Staple, it was ordained, that Merchants-Aliens might bring from beyond seas merchandise of the Staple, but not Merchants-Dominion.

Because Merchants-Dominion doubted to be impeached in time to come for their merchandise, which they passed by virtue of such Grant and Proclamation, forthwith as they were made out of Parliament.

Now it is granted in Parliament, 31. E. III. cap. 2.
Sec. 5. R. II. cap. 2. This Statute prohibit the exportation of Gold or Silver, and to no person other than Lords and great men of the Realm, true and notable Merchants, and the King's soldiers, go out of the Realm, without the King's licence.

This is declared to be after publication of this ordinance, which implies such licence was not necessary before the making of this Statute.

Mr. Attorney was pleased to allow, licence to particular persons to trade were not necessary; but Companies having such licence may be dissolved by *Quia Furor*.

Therefore none were to be dissolved in Companies than persons.

Then doth this Charter do the greater wrong to particular persons, who by Law may have such licence, which cannot be taken from them.

And it doth not appear, but *Secus* hath such licence, or may have, and ought not to be reformed there by any Grant.

Mr. Attorney did turn this matter upon a question of fact, which will, or will not make this Company and their Grant a Monopoly:

Viz. Whether this Company and their Grant be a public good and advantage to the trade of England?

This is a matter not to be decided in this Court, I suppose, and we cannot come at this question in this case; therefore not fit, safe or wise to dispute the Law in this case, till the fact be cleared and settled, and that in fact a Judge where this question may be determined and settled, and the Law thereupon declared and established.

It appears to the Court, there are many *alleged* things in this Grant.

That the Grant is a restraint to the trade of English Merchants.

That it is a new Grant.

That it may be dangerous to establish such Grants by Judgment in a Court of Law.

That there are some things in the Conary Patent, in Dory's Patent, say, in the Patent for Sweet Wines, that were commendable and useful; yet that little good did the Court, but the whole perished, and was put into the Monopoly of those Grants.

It is observable how this Court, in this action, can adjudge for the Plaintiffs upon this Record, where the whole Grant is set forth upon Record in pleading; and it appearing to the Court, that some parts of this Grant are manifestly illegal, and may occasion oppression to the subjects, and that the best parts of this Grant are doubtful, if good or useful for England, or the trade of it:

It cannot appear upon this Roll, for what part of this Grant the Court shall adjudge for the Plaintiffs, and against the Defendants.

And it cannot appear what part of it doth appear to the Court to be illegal.

This may turn to a precedent for the whole Grant in after-times, since we judge by precedents: And this precedent may occasion more Monopoly-Patents, and this Judgment give them sanction.

As for the second point in this case, whether this action be maintainable by the Company against the Defendants *Secus*, admitting their Grant to be good:

1. To allow such an action in a Court of Law for this Company against a single subject, will be to give them opportunity to run any subject, that shall oppose them in trade.

They that are too great for all other Companies in England, shall be too strong for any private subject in costell.

2. If their Grant be a legal Grant, they have sufficient pains and penalties in it to reduce any person to compliance with their Grant, without the aid of actions in *Wolvenholme*-hall.

And the Grant which makes them a Company, and doth constitute them and their power, doth direct the remedies, ways and methods to support and maintain them in their power and Company, in all the things granted them; and there being no remedy given them by action, I think it may be hard to adjudge, that an action will be for them in this case, against the Defendants.

In cases of new Injuries caused by Grants, or by Act of Parliament, and remedies created to repair such injuries in the Grants and Acts that create them, such remedies are to be pursued, and not new remedies to be given in Courts for such new-created Injuries.

This is an action brought upon the Grant, where no such remedy is provided by the Grant, and other remedies are provided by the Grant.

The Grant directs and gives forfeiture of all the goods imported against it, and the Ship wherein they are imported; but the Grant doth not exceed the offender to suffer damages in the Company, which is required by the Action, and so a special damage is laid out of the declaration.

This is like a penal Statute, which creates an offence, and adds a penalty.

The party ought to sue for such penalties, and not to sue for damages in an action upon the case.

This may be the case upon the Statute, 2. E. VI. for Tithes, it gives damages no damages; so the case doth not lie upon that Statute.

Upon the Statute for forcible entries, and upon all other Penal Laws, which give penalties by single, double, or treble damages;

It was never possible to bring them upon the case, upon such Statutes, unless in Dory's case, which action miscarried, *Idem* 101.

I humbly conceive this action is not like actions upon the Customs of London, or upon Duties to the City of London, which have been brought by way of Indebtedness for the duty.

In all these cases there was a certain duty created by the Grant, Custom or Charter, which made the party Debtor to the Corporation; but in this case there is no duty created;

Only an injury declared, and a penalty directed, which ought not to be turned to an action upon the case, in any opinion.

I hope the Court will not make a precedent, for the Company to multiply actions against all persons that they conceive to be intruders or aggressors upon their Grant, Company or Trade.

There is no special damage laid in the declaration to answer to the Company:

Only in general, that the Defendants, contrary to the form and effect of their Letters Patent, did trade within the limits of their Grants, without licence of the Company, with a Ship called *The Expectation*, to the prejudice of the Company.

William's case, 2. Co. 5. fol. 72. Defendant being Vicar of *Abbeley* in Court-bell, is obliged by himself, or his Clergyman, to celebrate divine service at *Wolvenholme*, and within the parish of *Abbeley* every Sunday, and to administer the sacrament to the Plaintiff, his servants and tenants within his said Manors, came out of mind:

And that the Defendants had not celebrated divine service, or administered the sacrament to the Plaintiff, his servants and tenants for a certain time, as demand of the Plaintiff. Now *ad*, pleaded, verdict for the Plaintiff, moved in street of Judgment, that an action upon the case doth not lie. Had this been a private Chapel for himself and family, as actions upon the case had lain, for then no other person could have brought an action but himself, his heirs and assigns.

But in this action, his tenants might bring the actions.

Which may occasion multitude of suits, for one default in the Plaintiff.

The same may happen in this case, every Member of this Company may bring the like action against the Defendant.

And as in this case the Plaintiff had his remedy in the Ecclesiastical Courts; so he hath the Company their remedy, as the King had against offenders, in trade without licence.

If licence was necessary by Law, by contempt to his royal prerogative, or prohibition:

Complaint is in the case of a nuisance in the highway, an action lies for it, without special damages.

They do not aver in the declaration, that this trade cannot be managed without their Company.

If there be any legal punishment provided for such offenders, such punishments are to be pursued, and not new remedies by actions created, to the grievance and oppression of the subject.

Darcy and Allen, Action on the case, brought by *Darcy* against *Allen*, for selling Cards, contrary to his Patent; Judgment per *Jury*.

William's case, 5. Co. 6. 72. *Mary's case, fol. 9.* *Johnson's case* is not to be relied upon when upon the case, but by public proceedings by indictment, or the like case lies per *private* demand.

The proceeding of the Company in this action, is supposed to be to right the Public in the name of the Company, not for the reputation of private damage, but to repair the Public in their Company.

The Company is in the nature of the late famous *Cyprus* *Lazarus* *Antique*; a nation to serve the Publick, as they would have it.

And not to be used to recover damages for private injuries, but to support and save the trade as publick actions.

This Charter releases the King in his prerogative, the Kingdom in its trade, the subjects in their freedom to trade; the King is concerned in its revenue, the subject in his right, in this question.

What the Company cannot accomplish by the forfeitures, powers and penalties of their Charter; they design to establish by the Judgment of the Court, in this action for the Company.

I know the Subject of this Court is superior to this Company, and it is placed in safer and better hands than trade or regulation of it in the Company for England.

I therefore pray your Judgment against the Company, and their action, for the Defendants.

Now 111. fol. 37. *Car. II.*

This Term the Judges delivered their opinions *seriatim* in this great cause. *Wolfe* was both short, and his reason being included in those of *Hallam's*, *Life*, who spoke after, I have omitted them, to avoid repetition.

Hallam's last, all might be reduced to one single point, which was, whether the Charter granting a sole trade to this Company, exclusive to all others, be good?

That this was a great point, both in regard of the King's prerogative, and the People's liberty.

He divided all trade, as *Ipse* was done per *Senyor*, Attorney-General. Foreign trade with Christians had been opened by several Acts of Parliament; and at Common Law 'twas an inherent prerogative in the Crown, that none should trade with foreigners without the King's licence. And the King having that prerogative at Common Law, an Act of Parliament is necessary to dress him of it; which none hath done but to some particular places.

Michaelson's case, cited by those that argued for the Company, hath not in any sort been answered by the other side.

This is a trade not to be carried on but by a Company; and none can erect a Company but the King.

The King hath the sole power of this trade, as of war and peace; and by declaring a war, he may determine a publick trade, tho' settled by Act of Parliament.

So the Parliament ever look'd on this as a Monopoly, nay, so far from it, as in the 11. *Car. II.* cap. 24. this Company, &c. are said to be an advantage to the Publick; and that Act was made, that the persons of this Company, &c. should not be discouraged in their honest endeavours, for promoting publick undertakings; thus how can this be a Monopoly?

It never hath been questioned as such by Parliament, though they have look'd narrowly into the King's prerogative, even to the qualifying some things which were his undoubted right; and consider per *Jury*.

William. Here are two points.

First, Whether Letters Patent giving a sole trade to a Company, exclusive to others, be good?

Secondly, Whether, in case if they be good, an action lies?

He thinks there is but one question, and that whether the action will lie or not, as the Company hath an interest or not. For if they have an interest by these Letters Patent, then the action will unquestionably lie.

The case depending solely on foreign trade with Infidels, he shall apply to that, and not meddle with inland trade.

First, he takes it, that by the Common Law the King has a prerogative to restrain all his subjects from going beyond Sea, as *F. N. B. 85*. "Thou mayst not go, every subject may go out of the Realm to see his friends, &c. but that it is to be understood, & that he shall not be punished for so doing, but the King may prohibit him, as appears by the same Book; and that three ways, (1.) by the Great Seal, the Privy Seal, or Signet, or by Proclamations. And tho' in *Dyer 185*, cited by Mr. Williams, it is said, that before R. II. subjects may go beyond Sea, yet 'tis there agreed, the King may prohibit; and a power is made, if a going out without a licence be not a contempt, though there was no prohibition. Afterwards in the same Book 260. his bolden forth departure before express prohibition is no contempt, it shall the Books say, when there is a prohibition, then it is a contempt.

As some may go against or without the King's licence, so if they are gone, the King may recall them, as appears by *Dyer 375*.

'Tis objected, the King may prohibit some particular persons by writ; but he cannot prohibit all his subjects.

Answered, There are several ways of prohibiting by writ, which is directed to particular persons; and by proclamation, which is general.

And all the King's subjects are bound to take notice of the King's Great Seal and Privy Seal.

Secondly, The King hath the controlling power over all trade with Infidels; he may say, over all foreign trade in general: he hath, *Mishburn's case* goes farther than *Fisher's* N. B. and he hath not heard any authority offered against *Mishburn's case*, as to trade with Infidels; and the opinion in that case seems to be given upon such a question as this. So that it is the judgment of the Court in a like case, for he who was then Chief-Justice delivered it, and none of the Court opposed it.

The prerogative of making leagues is in the King, and he may make them as he pleases; then it would be hard, the Law should give the King a power to make leagues, and yet the subjects should have a right to do such things to break them. But though the subjects may not trade with Infidels, yet the King may license them, or tie himself; as the Jews were prohibited to commerce with the Nations, yet *Salomon* traded with *Heaven King of Tyre* for Gold.

The several Licences and Patents, cited and shewn by the Plaintiffs Counsel, though they prove no right in the Crown, yet are evidences of it; for to what purpose should there be so many licences from the Crown, and patents from the Commons to the King, for liberty to trade, unless the King had such a right? Therefore, unless where the Parliament hath covered it, the King hath power to controul all foreign trade, especially such Infidels.

Objection. But though the King had such right, yet now the prohibiting part of the Patent is void by the Statute of E. III. which is pleaded; and the enabling part of the Patent is void by the Statute of Monopolies.

Answer. As to the first, that Statute relates not to that trade.

First, Because no such trade then in being; so that the Parliament could have no regard to it, unless by prophecy, neither could they know whether it would prove hurtful or beneficial to the Kingdom. But take the Act to the large, yet you must take it to relate to the subject matter, which was for Wool, so that the words *shall be* may be taken free from *Custom*, and to have no other imposition upon them.

As to the second, whether a Monopoly: he says, a Monopoly is no Imperial Act, but only against the publick part of our Law, which is of advantage to the Publick, as this trade is; then is certes a *so* to be against the prohibiting part of the Law, and so not within the Law of Monopolies.

The Company hath been in possession of this trade near one hundred years, and that possession will in time give a right; and cited *Graves de Jure Patris, &c.* and concludes *per Jura*.

The Argument of the Lord Chief-Justice *Tyffernis*, at the Court of King's Bench, concerning the Great Case of Monopolies.

The *East-India Company* Plaintiffs, and *Thomas Savary* Defendant; wherein their Patent for trading to the *East-India*, exclusive of all others, is adjudged good.

Entered Term 35 Car. II. B. R. Ret. 12th, and adjudged Termis S. Hil. Anno 36 C. II. Car. II. B. R. T. A.

P L E A.

I. Defendant demands *Oyer* of the Letters Patents which are set forth in his works: In which (as it hath been observed) the penalty of forfeiture of ship and goods, one moiety to the King, and the other to the Company, and imprisonment, is omitted.

2. There is a clause, that the Company may license strangers or others, and that the King will not without the consent of the Company give licences, &c.

3. That none shall have a Vote in the General Assembly, but be that hath good stock.

4. And there is another clause, which hath not been mentioned by the Counsel on either side; that if it should hereafter appear to his Majesty or his Successors, that Grant, or the continuance thereof, shall not be possible to his Majesty, his heirs and Successors, or to this Realm, that after three years warning, under the Privy Seal or Sign Manual, the same should be utterly void.

For Plea, the Defendant says, by an Act of Parliament, made 15 E. III. It is enacted, that the *foal* shall be open for all Merchants to sell with their merchandise where they please; and that the Defendant, by virtue of that Act, and according to the Common Law of England, did traffick within those places mentioned in the declaration, without any licence, and against the will of the Company, as the Plaintiffs have declared, *prout se bene* know.

Plaintiffs demand.

In the debate of this case, at the Bar, there were several matters dis-

counted of; but at length by the consent of both sides, at I apprehend, the case was referred into these two points:

1. Whether these Letters Patent giving or granting licence or liberty to the Plaintiffs, to exercise the sole trade to the *Indies*, within the limits of their Grant, with prohibition to all others, be good in Law?

2. Admitting the Grant good, whether this action be maintainable for the Plaintiffs?

Now to let me into the debate of these two points: I think not amiss, to remember some things that have been mentioned by the Counsel, that I think are no ways in question.

I. At this time I conceive, therefore, that whether the King may prohibit his subjects from going beyond sea, by writ or otherwise, by his absolute prerogative, without giving any reason, is not the question; nor was it: nor thought a question, till it was lately thrust at the Bar. For the writ in *F. N. B. 85*, and the *Regium Imperium* no such thing; and one Book says, the *furnishes* mentioned in that writ are not invariable. So in *Dyer 185* & 375. For surely the King may restrain his subjects from going beyond sea, and is not bound to give any reason for his so doing; but that is not now in question.

II. In the next place, I do not conceive there is any difference (tho' much discourse hath been about *Indians* and *Infidels*) whether the *East-India* were, at the time of the Grant of this Patent, inhabited by *Christians* or *Infidels*; tho' by the way, in the debating of this case, I shall shew perhaps that matter may in some measure affect the Defendant, but will not at all affect the Grant to the Plaintiffs. So that I conceive, that whether this country or place, or any other inhabited by *Christians* or *Infidels*, that is not otherwise provided for by Act of Parliament, will make but the same question.

III. Whether every clause and article in their Letters Patent, touching forfeiture of ship and goods, imprisonments, or divers other clauses contained in the Charter, be legal or not, is not now in question. For surely it would be hard to maintain them all, and therefore the Plaintiffs Counsel have avoided those questions, by bringing this action; and tho' the Defendant's Counsel have answered them, yet surely it was only intended to fully the cause, and not that they thought them to affect the question.

IV. Nor is it the question, whether by this Grant to the Plaintiffs the King has fettered or confined his prerogative, by putting in a covenant to exclude himself from granting licences to others of his subjects to trade within the limits of the Plaintiffs Charter; tho' Mr. Williams (always a friend to the King's prerogative), in underhand and close terms, seems to be surprised by the moderate and temperate of the Grant; and would have us believe, that he was affected with the dismal consequences that must necessarily ensue by the King's parting with so great a prerogative; and that uttered by the advice, consent, or the solicitation of his Attorney-General, and the rest of his Council; by having a system agreed to the *East-India Company* for the sake of their money, than they had to the King in discharge of their duty. To acquit them and us, therefore, of that dilemma, I am of opinion, though it makes nothing to the question that is now before us, the King may grant licences to any of his subjects to trade to the *East-India*, notwithstanding the Charter, or any statute, clause or condition therein contained, to the contrary; and notwithstanding any caution or advertisement, that in his argument he gave to the King, or his relation that he made upon his Council, either for their ignorance or the subtlety of the advice, consent, or the solicitation of his Attorney-General, and the rest of his Council; for that the least of our profession, who's opinions have been quoted by him and others that have argued on the Defendant's side, were then of the King's Council, and were privy to, and advised both these Letters Patent, and all others of the like nature, that have been granted for these hundred years last past. I therefore think fit to say, that I believe Mr. Attorney-General, and the rest of the King's Council, have discharged their duty as well to the King, by maintaining of this Grant, as Mr. Williams has in this instance manifested his loyalty, by endeavouring to destroy it. In short therefore, as I said before, every clause in this Charter is not to be maintained, and therefore is not to affect the question now to be determined.

V. Whereas it has been objected, that though upon the pleadings it is agreed, that the Defendant never was a member of the *East-India Company*, nor had any licence from them to trade to the *Indies*, yet he might have a licence from the King; which, as I conceive, the King is not bound to grant by any clause in the Letters Patent; yet I am of opinion, that if the Defendant had any such licence, it ought to have been shewn on his part; which not being done, it ought to be taken by us, as I believe the truth of the fact is, the Defendant never had any such licence.

VI. It was observed, that the Plaintiffs by their declaration had alleged, that this trade could not be managed but by *honest* *Corporations*; and by this means they had excluded the King from constituting any more Companies to trade within their limits, tho' perhaps the advantage of the Kingdom might hereafter require it. Nay, tho' the *Indies* might desire a further treaty of commerce, or that the state of these places might require more Companies to be erected, yet say they, this Grant hath made the Plaintiffs a new Republick, and thereby has altered the constitution of England, in the management of trade by *Commonwealths*, by placing it in *Corporations*, who (were they independent upon the Crown) are truly to be called. Yet in as much as I had before observe, that the King is not by this Grant either excluded from making any new treaties with the *Indies*, or from making any *Corporations*, or granting any other licence to any of the rest of his subjects, notwithstanding any of the clauses in the Charter, so I am of opinion that that objection also does not affect the question now to be determined; and for that reason, amongst others, I thought it not improper to mention that Clause in the Charter that was omitted at the Bar, which the King has annexed as a condition to his Grant; that if it should hereafter appear to his Majesty or his Successors, that that Grant, or the continuance thereof, in the whole or in any part, should not be probable to his Majesty, his heirs and Successors, or to this Realm, that after three years warning by warrant under the King's Seal or Sign Manual, it should be utterly void. So that it appearing that the King hath never divested himself of the power, nor at the time of the Grant did design to be prevented, so shew his inclination for the promoting of the advantage of his Kingdoms by giving himself scope enough to oblige all those contingencies. Yet

by the way I cannot but observe to his *Majestie*, so these his *dislike* to a Commonwealth, declared it to be absolutely *opposite* to the interest of a single person; but the single person he can call himself far, was not the King and his prerogative, but his Client the Defendist, and his trade, who thin I cannot in propriety of speech call a Commonwealth, yet I cannot but think this apostrophe of his seems to proceed from a Republican principle. For by his interposing has been the first fabric that within this Kingdom, for near an hundred years last past, hath in *Wolmington* set up against himself against the King's uncontrold prerogative in the Grant of the *Wolmington* and the *Wolmington* of his Majesty's subjects will be derived from the first definition.

There were some other superfluous objections made against the clauses in the Charter, and against the formality of the pleadings, which I think not necessary to remember; and therefore having thus premised, I shall now descend to those points I think only material in this cause.

31 The first and greatest point in the cause is, Whether this Grant of the Goldreale to the *Indies*, to the *East-India Company*, exclusive of all others, be a good grant to *Law* or not? And I am of opinion it is. And by the way, I cannot but make the same remark in this case, as my Lord Chief-Baron *Ponson* made in the great case of *Bairn* in the *Exchequer*, *Year* 27; that it is a great grace and eminent act of consideration in the King to the Defendant, that he does permit this great point of his prerogative to be disputed in *Wolfe's* *Chancery*; but by this he does sufficiently signify to all his subjects, that he will persevere in nothing, tho' it seem never so much for his advantage; but according to the *Laws* of the Land. I shall therefore endeavour to make it appear, that he is invested with this prerogative by the Law of this Nation: but by the Law I do not only mean the customary Common Law or Statutes of this Realm, which are native and peculiar to this Nation, which as Mr. Attorney well observed, are not adapted to this purpose, but such other Laws also as be common to other Nations, as well as ours, and have been received and used time out of mind; by the King and People of *England*; and I shall shew, that the Laws of *England* are not the general Laws of *Europe*, but the general Laws of *England* in those cases, namely, the general Laws of Nations, the Law-Merchant, the Imperial or Civil Law, every of which Laws, so far forth as the same have been received and used in *England* time out of mind, must be properly said to be Laws of *England*.

And for the better communicating my thoughts upon this subject, I will proceed by these steps:

1. I will very briefly consider of the inland trade within this Kingdom, and the foreign trade with other Nations; and therein observe, that the King's prerogative is concerned in both, and that there is a great difference between both, allow'd by the Municipal Laws of this Kingdom.

2. I shall show that the liberty of foreign trade may be restrain'd.

3. That foreign trade and commerce being introduc'd by the Law of Nations, ought to be govern'd and judg'd according to those law.

4. That by the Laws of Nations, the regulation and restraint of trade and commerce is reckon'd *inter Regalia*, i. e. the prerogative of the sovereign legislature.

5. That tho' by the Laws of this Land, and by the Laws of all other Nations, Monopolies are prohibited, yet Societies to trade, such as the Plaintiffs, to certain places exclusive of others, are no Monopolies; by the Laws of this Land, but are allow'd to be erected both here, and in other countries, and are thereforen'd by the usage and practice of both in all times.

6. I shall show the authorities that are extant in our Books, together with precedents, and reasons both publick and pollicke; for, as Mr. *Lowmeyer* says, that such reasons are good dardlines for our judgment in such cases as these, being demonstrations of the cause of antiquity; and therefore also observe the necessity and advantage of said Sacrament, and by the way endeavour to answer the several *Abuses* of Parliament, precedents and authorities, with all other the objections that have been made against my conclusions.

conclusion. To be sure, to consider the difference between the inland and the foreign trade allowed of in our Books, and that the King's prerogative doth affect both. As to Manufactures, under which all sorts of Artificers are concerned, I think they remain with the nobility by the Common Law; and as Mr. Attorney observes, the publick wealth is little concerned therein, and that the King's prerogative is not so much concerned in the exercise of labour and industry, yet even in that the King's prerogative hath not been totally excluded: for as it is taken notice of in our Books, all things that are at this day enjoyed by custom or prescription, had their commencement by royal Grants; and by that means no Artificer within the City of London was ever free from the payment of a *licence* or *tax*. Garretts cannot use the trade of *Tanner*, or of *Bookbinder*, or of *Shoemaker*.

3. As to the trade of merchandise or inland commerce, generally speaking, it had the same freedom by the Common Law, but was subject nevertheless to be limited or restrained by the King's prerogative in several particulars; as for instance, to prevent all forebidding and engrossing. So Mr. Attorney did well observe, that numbers of people could not meet to traffic or merchandise, without being in danger of being punished as unlawful assemblies. The Crown therefore granted the Liberties of Fairs and Markets, for the sake of commerce and trade, all which did originally proceed from the Crown, and therefore by absolute Liberty might be granted to the Citizens, to the Knights, or to the Burgesses, and so forth, but only in defiance one taken notice of in our Books, which well couldn't may go against any in the case of the Bar. *Regius, fol. 207.* The King grants to the Abbot of *Wigmore* and his successors, that they should hold a Fair at *Wigmore* thirty odd days together, with a prohibition that no merchant buy or sell within seven miles of that Fair during that time; and the King does then command the Sheriffs of *London* by his writ to seize the body of an inhabitant of *Salisbury*, for selling cloths in *London* within the time of the Fair. Now here is a Charter granted to a particular person exclusive of others, for a time subject to more objections than the Charter ten years in question, yet approved of by our Books. Hence it came that the Citizens of *London* were not content to please the Crown in the purchase of money, for all such came originally from the Crown. And as I find before in the case of *Edin*, in 1 May now lay in the case of *Copeland*, that the City's claim liberty and prerogives by prescription, yet not originally proceeded from the Crown, and are therefore forfeitable to the Crown: an eminent instance hereof is that case of the City of *London*, where

during their liberty, which they choose to prefer, cannot be
 taken from them, and Act of Parliament, in this Court, their li-
 berties and franchises were not intended to be taken away, as
 it will be all intent and purpose, till his Majesty shall be pleased of
 his bounty to release them. Now that the island of Jamaica is con-
 cerned, in Corporations, Markets, or Fairs, which all proceed from the Crown,
 does plainly evince that the King's prerogative has a more immediate in-
 fluence over dealings in merchandises, than it has over other mechanic
 crafts and mysteries: and that, as Mr. Attorney did well ob-
 serve, to prevent frauds, deceits, and other abuses either in weight, measures, or other-
 wise, which would certainly interrupt such commerce. But our Law goes
 a step further, and allows further difference between island merchan-
 dises, and such as are sold in a foreign way of dealing, which confirms
 that strict distinction. The Common Law and Statutes of this Realm, af-
 fecting the Law-Merchant, which is part of the Law of Nations, should
 decide such controversies. *Devises* terms H. IV. fol. 49. a complaint made
 to the King and Council of some debts taken away from a Merchant; it
 was answered in that case, that the matter might be determined at the Com-
 mon Law: but the Lord-Chancellor said, that the fact being brought by
 a Merchant, who is not bound to sue according to the Common Law, to
 have his cause tried by twelve men, and to observe the other solemnities
 of our Law, but that fact in *Globery* according to the Law of Nature,
 and the Commercial Law of the World. And it is in that case agreed
 by all the judges, that the fact being brought by a Merchant, who
 could not be sued, as other English merchandises might be, by the Rule
 of the Common Law, as wares and draps, which do not plainly then
 make a difference in the consideration of our Law, between foreign merchandises
 that such the seas, and other inland goods and commodities. If two Mer-
 chants be partners in merchandises, one shall have an action of account
 against the other, *Joannes Leges Mercatorum*, says the *Registre*, fol. 135.
 & F. N. B. 117. D. And yet by the rule of the Common Law, if
 two men be jointly possessed of other goods, which are no merchandises,
 he cannot bring an action as account against the other, if one of the
 partners die, the Executor may bring his account against the heir for
 his society, *Reg. 83. F. N. B. 157.* But if it were a partnership
 for other goods, it should follow *per hoc asserendum*, according to the rules
 of the Common Law.

It is an admission of guilt upon a simple Contract, the Defendant may wage his Law; but it is otherwise in a Contract about Merchandise, in *Law Reports, Bate's Case*, Reg. 260. A. at Common Law, the goods of Ecclesiastical Persons were executed from toll; but says the writ, *Domus Abbatis* *Abbatibus aliquos non carere de tollis*. It shows, that then they fall under another consideration. If one man wrongs another man of his goods, here is an admission of trespass will lie: But if a Merchant's Goods be taken upon or beyond the Seas, there must be a Writ of *Replevin* to obtain satisfaction; the *Parl. Roll. 3 Ed. 1. At 10. in Arden's V. Arden* *Ueneris* *Ueneris*, where the Bailiffs of *Sussex* were so commanded by Writ, *quod omnes Mercatorum Lenditores et parvi Agiles accedentes per bona et casuella sua ad quicquid forentur Legem Mercatorum et Consuetudinem Regni, ad satisfactionem Mercatorum Parvorum, &c.* Where, by the way, observe, that *Lex Mercatorum*, which differs from the ordinary Common Law, is to be *confutata regis Agilis*; by which others may observe, that the rights and remedies of the Law, are not from others the eye of Law, nor the allowance of Common Law itself.

Several Acts of Parliament have been also made for the more speedy recovery of debts contracted for merchandise, as the Statute of *Aban Barrow*, the Statute of *Alfordwille*, and the Statute *Exchequer*. Ed. III.

top. 2. among other things it touched, That for merchandise taken away, the Party shall be arrested, and finally ready Process shall be against him from day to day, and from hour to hour, according to the Law Merchant, and not at the Common Law. So the Statute for enabling the Court of Commerce, designed for the speedy sale of Merchandise, has left the determination according to the Law of Merchants; and therefore hath ordered the Judge of the Admiralty Court always to preside in their Commission. By all which I think it may be concluded, there is a great difference allowed of, between the inland and foreign commerce, and that.

I shall endeavour to prove, that the liberty of foreign trade may be restrained.

And here I must premise, that as at first all things were promiscuously common and undivided to all, so the free exercise of this universal right, was then instead of property, but as soon as the number of men increased, and they found by experience the inconvenience of such a thing, they began to divide amongst themselves the rights of ownership and compact, either by purchase, or by institution, or implied, by senior Civitas &c.

After this Government was established, and laws were made, even for the ordering these things in which no man had any right; as for example, forests, places uninhabited, islands in the sea, wild beasts, fishes, and birds; the former were usually gained and disposed of by him that had the sovereignty over the People; the latter, by him that had the dominion over the Lands and Waters, who might forbid others from hunting, fishing, &c.

And in virtue of this universal Law, his Majesty and his Predecessors have always defended the several Plantations abroad, that have been discovered or gained by any of their subjects, and may do for the future, in case any other be discovered and acquired. For tho' the laws of Nations command nothing which the law of Nature forbids, yet they may banish and circumscribe that which the Law of Nature leaves free, and forbid that which naturally may be lawful. Now to apply this to our present purpose of trade and commerce, Mr. Williams quoted that common law Latin, *Commerce dicitur esse liberum* from whence he infers, that by the Law of Nature and Nations, the free trade, and traffic ought to be free as the air, and that for that he quoted *Grotius de Jure Belli* lib. 2. c. 1. *Epistle to the Lord Admiral* Gratius de *Mare Nostrum*, where Gratius, *Mare & Littora Alteri Tunc Sine Jure Communi*. Williams, cap. 3. *De parochis, de Mare & de Jure Juri Communi*. Sir John Burroughs his Sovereignty of the Seas, *Nactus de Jure de Dominis*. But I think none of these Books can warrant his conclusion; for sure that expression, *Commerce Juri Alteri*, cannot possibly be understood in this

was the constant and ancient usage. And it is not more natural for strangers than are abroad, to take notice of the King's publick Edicts, which are known to be of great importance in all Countries, more than they would of an Act of Parliament that affects the King's own dominions only? Besides, it appears more impertinent, if you turn these words into a *Proviso*; and then it will amount to no more in plain English than this, *provided that this Law shall continue, except it is longer express'd*; which surely would be very ridiculous.

Mr. Attorney and Mr. Solicitor both, in their arguments, quoted several Records and Precedents, wherein the King, in all times after the making of that Act, did prohibit strangers from coming in, and did command them out when they were here, at pleasure. I shall not trouble you with the repetition of the Records, for they were many, say, the King when Acts of Parliament had prohibited, did grant free-coming; and of that sort, in *Roli Prærogative*, 180. you will find several instances; and in the several Acts of Parliament cited by Mr. Attorney, to confirm the King's prerogative, as to free coming, in each Appare. *Hyndes* fol. 442. is said, that the King by the Common Law, might prohibit the importation of foreign goods; and whereas added against such Prohibition, fortified his Ship.

The King may prohibit any of his subjects from going beyond the seas at pleasure, and read them again as he thought fit; and that, as I have said before, without giving any reason. The Books of *Statutes* N. B. and *Regius*, before recited, make this evident. Mr. Attorney indeed cited many instances wherein the Kings had made use of their prerogatives, as 7 Ed. II. fol. 10. *Spensford* Ed. III. fol. 24. Stat. 5 R. cap. 2. which confirms it, 3 Ed. IV. fol. 10. *Spensford* Ed. III. fol. 12. with many more; and indeed I think it was not denied, but that after a Prohibition, it was an offence almost as it is the Defendant's Counsel for any subjects to go beyond the seas, 2y. 135. fol. 198. *Spensford*. And that is sufficient for the present purpose, to say being a Prohibition in the Charters in question, to all persons that are not there mentioned. What influence the King's prerogative may necessarily have upon foreign trade and commerce, appears by his frequent granting Letters of Mart and Reprieve: They are not allowed of by the Law of Nations, Civil or Common Law; for thereby no man is bound by another's act, without his consent, but by the general consent of Nations, *homines recipiunt legem*. The King only has the power of making leagues and treaties with foreign Princes, upon which only all foreign trade does depend; and since leagues are made upon such terms and conditions, and under such limitations, as both Princes think fit. Many instances to this purpose were also cited by Mr. Attorney, to which I refer myself; and the difference that arise from Merchants beyond the seas, are to be determined according to their leagues, and cannot be decided by the municipal laws of this Realm, which cannot be put in execution in foreign parts.

Fourthly, The King is absolutely Master of War and Peace; which he could not be, if he had not a power to lay restraint upon his own subjects in relation to foreign commerce, since 1399, that war is proclaimed, all publick commerce is prohibited; and the Council that signed for the Defendant, admitted, That the King might prohibit his subjects to go to trade beyond the seas in cases of wars or leagues. How strangely preposterous then would it be for a man to imagine, that the King should have an absolute power of War and Peace, and yet be denied the means to perform the one, and prevent the other! Is not that therefore the great reason why the King is at great expense in maintaining Ambassadors and Envoys in all the trading parts of the World, without which we should be in a perpetual state of War! Would it not be monstrous, that when the King is entered into league with any foreign Prince, in a matter of trade, very advantageous to his People, to have it in the power of any one of his subjects to destroy it? As an instance, suppose a league between our King and the Emperor of Morocco, for a trade to Tongo, were made upon condition, That no English Ship coming there for commerce, should be above a hundred ton, and a fleet of merchant ships within that condition, were in Port at Tongo; and Mr. Somers, with the same ordinary as he seems to appear in this case, should have gone with a Ship of above a hundred ton to Tongo; that would have been an absolute breach of the league, we should have been immediately in a state of war, the merchants and goods absolutely forfeited unto the Emperor by the Law of Nations, and they and their families thereby undone, without any remedy, till Mr. Somers should be pleased to return into England; and also being with him an Estate sufficient to make them a recompence, and then also perhaps it would be difficult to contrive such an act as in our Law, to compel Mr. Somers to do it. Besides, the King has another way, of his Ambassadors and Ministers in foreign parts cannot put all that right should be done to his subjects; or if Mr. Somers's merchant Ship, and all its cargo, had been wrongfully taken away from him by any foreign Prince, him by the King's declaring a War, and compelling them to make restitution by force; the contrivance is wherein will all of us, that foreign traders, would be thereby undone, both in their persons and goods; and it would be very hard for all the King's subjects to lie under the burthen and charge, and the profit and advantage above only to a few. And lastly, by the way, I think it is not proper to take notice of an objection that was made by the Defendant's Counsel, of the unreasonable that the King should be entrusted with this prerogative, for as well as it may restrain persons trading to the sea, he may also restrain them from trading into any other part of the World. The next objection was touching an embargo, as well as upon the said instance as a subject to his Prince. For as it is a maxim in our Law, the King can do as he pleases to do justice; and I am for the Defendant, that our present King has no more power as the least embargo for such disorder, and I think I may truly say, we are as safe by our Prince's own natural inclinations, as we can be by any law in this particular. The King has the absolute power of punishing all offenders by his inherent prerogative, who an Act of Parliament cannot deprive him of, the case of murder is a full instance of that, not was that prerogative ever depurged in any age, tho' twice in rebellion, having in that high case of the Earl of Essex, and that without any reason,

that I could ever hear of. Is it therefore to be alledged and pretended, that the King will pardon all the traitors, murderers, robbers, and other felons, and make use of his prerogative to let all malefactors escape?

The King is the Fountain of Honour, as well as of Justice, and in virtue of that prerogative, may ennoble as many of his subjects as he pleases; and thereby exempt them from arrests, and other common proceeds of the Law, by means whereof men do more speedily recover their just debts, and have redress for injuries. Is it therefore to be pretended the King will make such a glut of Nobles, because he may do it? And as this is against his inclination, it is certainly it is against his interest, to make such Grants as are detrimental to the Country from so far, for it is more for the King's benefit than it can be for his subjects, the greater the importation of foreign commodities is, for from thence arise his customs and imposition, these necessary supports to the Crown: and therefore, in those parts, the King is the only person truly concerned in this question, for this Island supported its inhabitants in many ages without any foreign trade, at all, having in it all things necessary for the life of man.

Terra pascit ovem, non ovem pascit, says the Poet. And truly, I think, if at this day most of the English commodities were absolutely prohibited, it might be injurious as to the profit of some few traders, it may not be to the generality of the inhabitants of this Realm. And therefore, as I have offered these instances to prove the King should have such a prerogative; as the next place I come to, shew, that the Kings of England have exercised their prerogative in all ages; and as the King has the power of restraint of foreign trade, he is the only Judge when it is proper to use that power, which seems plainly to be for the same reason. And I think Mr. Somers's remark of the difficulty of this case, that it should needs make the King to call a Parliament to assist him with power to determine this question, is not so to be paid by without some satisfaction.

God be praised, 'tis in the King's power to call and dissolve Parliaments; when and how he pleases; and he is the only Judge of this *Arbitrio Regis*; that he should think fit to consult with the Parliament about, *Aut* Mr. Somers would do well to leave himself the trouble of advising the King of what things are fit for him to consult with his Parliament about, 'till such time as he be thereunto called. But it hath been too much practised at this and other times in *Windsor-Hod*, of late years, to captivate the *Leg Gens*, by letting the power of the King, and advancing, I had almost said, the prerogative of the People; and hence hence comes the many and bad use of the King's subjects in parts abroad, by making the power of the King thought to be inestimable, as though he were a monarch Duke of *Perse*, being absolutely dependent upon his Parliament. Would it not be mightily for the honour and dignity of the Crown of England, think you, that the Emperor of *Fus* and *Moscow*, or any Prince of the eastern part of the World, should be told, That Mr. Somers, one of the King of Great Britain's subjects, came into the Emperor's Territories against his Prince's consent, and that he had no power to hinder him, unless he would consent with all his Nobles, and the Representatives of all his common subjects, to assist therein? Would not the Emperor believe *Somers* to be the greater Prince of the two? But tho' such sort of declarations are so much for the service of the Crown, and for the honour of the Kingdom, as they would have it believed, yet I think they have the same tendency of duty and service to the King, with some other matters that of late have happened amongst us, viz. Some have been so concerned, as well for the safety and security of his Majesty's sacred Person, and so make him formidable to his rebellious subjects at home, as to desire that his Guards might be discharged, because it looked as though he designed to ride by a handing army; and to show their tenderness to his sacred Life, would have him removed from the assistance of well Counsellors, as they called them; and put himself into the hands of assassins, as the Emperor's Princes were not sufficient to furnish that piece of state-policy in one and the same age. And in order that he might have sufficient to support the necessity, as well as the dignity of a Crown, which all good subjects are zealous for, I am, I have, usefully endeavored to have prevented him from being able to borrow any money upon the credit of any part of his revenue, a privilege that the meanness of the person concerned in that question would think themselves highly injured to be deprived of.

These and the like attempts, if not prevented, will render the King and his Government low and despicable in all other parts of the World: And as for the instance between a Denizen and a man naturalized, I think it rather makes against, than for Mr. Somers's conclusion, as in the main question. For tho' the King cannot naturalize a man, and thereby give him inheritable blood, as a natural-born subject, to inherit lands; yet he may make an Alien a Denizen; and by that means he becomes to have as much privilege as any of the King's natural subjects both as to trade and commerce, which is the only question now before us: And I cannot help being of opinion, that this Kingdom is in greater regard to itself, and the inhabitants more prosperous at home, when the prerogative of the Crown was more absolute than now it is: therefore it is our duty as good Judges, as well as good Subjects, to endeavour to support it as much as we can by Law. And I proceed to mention some precedents and authorities, whereby the Kings of England have in all ages exercised this part of their prerogative, of restraining, disposing, and ordering matters of commerce and foreign trade, by Royal Licences, Charters, and Dispensations.

And herein I shall content myself with as much brevity as I can, only producing some few of these many instances, which I will not great care and study found out by Mr. Attorney, and Mr. Solicitor; and by them to be learnedly and properly applied to the case in question.

1. Therefore it has been well observed, that the Statutes, which were the common and publick Marts for all Merchants to refer to, were first created by the King's prerogative, without any Act of Parliament; as it doth plainly appear by the several Acts of Parliament mentioned as the Bar, either for setting the places, or enlarging the commodities that were permitted to be brought to the Staple; for surely in all times, when

As the Stat. 5 R. 14. The Commerce of the Sea is subject to a just Foreign Goods at their pleasure, except Goods of the Staple, notwithstanding any Proclamation to the contrary. *Reg. 14. Stat. 5 R. 14. fol. 10. 10. 11.*

that no other Ships should be thus freighted for foreign Parts, till the Ships of that Town were full freighted; as he did, *Rex. Clauf. 41. E. III. m. 25. de Lendæ, Druar.* or any other Town of Trade complain? Would any of these Gentlemen that contend for this Liberty of Trade, adventure with their Persons to *Alger*, and when they are seized upon by the *Algerians*, tell them we are *Englishmen*, and we have by the Common Law of *England*, and many Statutes of our Kingdom, which support the Liberty of the Subject, a Freedom to trade wherever we please? Or would not they rather say, we have a Pass from the King of *England*, and rely upon that, which prefumes Treaties, Leagues, and Tracts between Princes; and in case that will not prevail, the King will let them right? And in the Charter that is now before us, there is a particular Refutation and Limitation of Trade to any Prince in unity with our King. Now as the constant Usage and Practice of other Countries warrants such Statutes as these, so do ours too: For, as I said, the *Spain* Towns were some of the first Corporations of Trade that we read of in History; so was it thought the Interest of *England* to support and encourage them.

King H. III. gave them great Privileges, and the *Sail-yards* for their Residence, which they enjoyed near 300 Years, managing their Trade by an Alderman and Council, called *The Guild of the Haven*, importing the Trade of *England* for Grain, Cables, Masts, Pitch, Tar, &c. and under that Colour the *Joynists* at this Day claim several Privileges.

It is observed by many Historians, that the most Bounding Trades have been begun by united Societies, and Partners.

In this Kingdom a Patent was first obtained for the eroding the Staple, from E. III. before any Act of Parliament interdicted in that Trade, and proceeded under several Regulations till the Time of Queen Elizabeth. In the Book I have before, *Majesty's Letters Patents*, fol. 170. 622. 7. His Company of Merchants are above 400 Years standing, as that Book reckons from 1248, when the said Merchants obtained Privileges of John Duke of Brabant, and were called the Brotherhood of St. Thomas Bachelors of Canterbury: Which were confirmed by King H. III. H. IV. H. V. H. VI. E. I. H. II. H. III. H. VI. who gave them the Name of *Wool-Stack Company*, and after time confirmed by H. VIII. E. I. Q. M. Q. Elizabeth, and King James, not without many Exemptions and Privileges, especially, says that Book, of late raising them to be Monopolies, and unprofitable to the Commonwealth, being that all our Cloths are not dressed and dyed in *England*; yet it still prevailed, as being thought for the publick good.

And 'tis observable, that Queen Elizabeth did not only wish, what was done by her Predecessors, but augmented and greatly enlarged the Privileges of this ancient Company; and confirmed the Charter of the *Wool-Stack Company*, granted by Philip and Mary, and set up several other Companies, in the first Year, mentioned at the Bar in the *English-India Company*, and the *Liverpool and the English Company*. And although this ancient and beneficial Company of Staplers was often opposed by particular Persons, and complained of as a Monopoly intruding upon the Liberty of the Subject, in several Parliaments, in the Time of H. IV. H. VII. E. VI. and Queen Mary; yet all Parties being heard, their Complaints were fully answered, and the Company's Privileges ratified and enlarged.

Again, in Queen Elizabeth's Time, the Clothiers having prevailed against the Company, the clothing Companies were almost quickly raised, and reduced to that Extremity, that in 29 Eliz. the Lords of the Council first for the Members of that Company, desiring them to mollify their Privileges, and cheerfully to proceed in their Society; with Assurance of all Countenance and Assistance from the Government. And in the Reigne of King James, after several Interepleas had endeavoured to destroy the Company, the King published his Proclamation to restore the Company to its ancient Privileges.

So did King Charles I. 7. Dec. 1634. reciting, "Whereas we have taken into our princely Consideration the manifold Benefits that redounded to this Kingdom; and finding how much Order and Government may be conceived in the said Trade, and Advancement of the same, we have thought fit, with the Advice of our Privy-Council, &c." There he gives an Establishment to the Company, and prohibits any to intrude upon their Privileges, upon pain of such Punishments as the Star-Chamber shall inflict.

Since this, it may be worth Consideration, whether the breaking of this Company, has not occasioned the great Decay of our Trade in Wool: It being agreeable to Reason, that as so few can be effectual without Courts of Justice to put them in Execution; nor a flagrant Army subvert without Discipline: So a flagrant Trade managed by particular Persons, whilst every one is free to attend his own private Interest, will run the Trade in general, especially such a hazardous Trade as this to the English, which already hath been too chargeable, and can only be prevented by the Conduct and Government of a public Society: And fairly to look after and settle these Matters, properly belongs to the Care and Prudence of our Governors.

Now I shall observe, how the Practice has been both in Queen Elizabeth's Time, and ever since, and that although many Charters like ours at the Bar have been granted; and none ever demanded by a Judge in *Windsor*, but so many as obtained, have risen private Interests, will run the Trade in general, especially such a hazardous Trade as this to the English, which already hath been too chargeable, and can only be prevented by the Conduct and Government of a public Society: And fairly to look after and settle these Matters, properly belongs to the Care and Prudence of our Governors.

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and did obtain a special Privilege to exclude those Foreigners, which, had not that Act of Parliament been made, they had been liable to; which I take to be an Authority full, as to the Case at the Bar.

Queen Elizabeth, during her Reign, granted several Charters of the like Nature, which pulled the Persons of her Attorney and Solicitor, learned Men in her Profession. In the Beginning of her Reign, her Lord Chief-Baron Willes was Solicitor, Sir Gilbert Gerard Attorney-General, and pulled those Patents both to the *Raffia* and *East* Companies, 32. Eliz. my Lord Chief Justice Popham was Attorney, and the Lord-Chancellor Egerton Solicitor, in whole Time some few such Charters were also granted like to this at the Bar. And then my Lord Gage was Attorney-General, and my Lord Chief-Baron Fleming Solicitor-General, who appeared thereof; and it is observable, that in the 43 and 44 of the Queen, the Parliament took Notice of many Patents of Monopolies, as it appears by the Book cited at the Bar, *Tramper's* Collection, 214. and 245. The Parliament seemed to be as high as ever they were in any Act before, and particularly were in mind by those Patents. A List of all were brought in by Mr. Secretary Cecil, that were thought grievous or prejudicial to the Commonwealth; and though there were a Catalogue of forty or fifty, amongst whom that of *Darg* is one, yet the Parliament, nor more other, complained of any Charter granted to Corporations, but they continued undisturbed. And by the way it is not amiss to observe, that *Darg's* Patent was not immediately dissolved in Parliament, but referred to take its Pace in the *Star-Chamber*; the good Reason, that pulled that Judgment was, the Statute that was put upon the bare Trade; and in it appears in *Mist's* Reports, 672. And thus stood these Charters; the *Clive* Charter, the *Turkey Company*, the *Barbery Company*, the *Givine Company*, all Charters of sole Trade, excluding others, remained in Trade during all Queen Elizabeth's Time.

But in the third Year of King James was the first Act made for opening a general Trade to *Spain*, *Portugal*, and *France*, so that all the King's Subjects; which could not be done in *Windsor*, as appears by the Preamble to that Act, nor does that Act call these Charters Monopolies, or give them any other Name of the like; nor does it leave all Charters of foreign Trade, *Love to Spain*, *Portugal*, and *France*, to remain as they did before. And in the 4th of *James*, cap. 9. there is Notice taken particularly of the Charter granted to the *East* Merchants of the sole Trade to *France*; and because it was thought to be damaged by the general Words of that Statute E. III. yet it is there enacted and declared, That the said Statute of Patents, neither did nor shall it dissolve, diminish or impeach the said Charter, or the said Company in any of their Privileges, Liberties, or Immunities, granted unto them by the said Charter, any thing contained in the general Acts to the contrary notwithstanding, in the Act of Parliament which follows.

I. That the Parliament thought that the Charter to *East* for sole Trade to *France*, exclusive of others, was for the publick Benefit and Weal of that City.

II. That the Letters Patent were good in Law, and did not want the Assistance of an Act of Parliament to support them; for that Act does not confirm those Letters Patent, but provides only, that the Statute 3. *James* should not by general Words be thought to impeach or destroy them. Now had the Parliament thought the Charter void or infirm, they might have confirmed or strengthened it, as the Statute Patent was; but they concluded, that had it not been for the Statute of *Tennis*, the Charter was good to all Intents and Purposes: And so this I take to be full Authority in the Case at the Bar. But to proceed, the Grounded Patent for sole Filling, exclusive of others, granted by Queen Elizabeth, is held good, *Rolle*, Part 3. fol. 3. *Taylor* vs. *Isbells's* Case, and the Case of the Abbot of *Windsor*, is agreed to be Law; in *Darg's* Case, *Mist*, 673. by Mr. Justice Dunderidge: And by the way he gives good Advice to all Persons that dispute the King's Prerogative; and for the *Flemish* I hear to Mr. *Levy*, and others that are now in Court; and I think need the Advice, Corps will fall into his Eyes; *Et qui Moysiam formosus praecepit, appropinquat splendore suo*.

In King James's Time, many Grants, like ours, were made, but particularly in 7. *James*, the Patent granted to the *English-India Company* by Queen Elizabeth, was, by the Advice of her Council, as well as by my Lord *Holborn*, then Attorney-General, and Sir Francis Bacon, Solicitor-General, confirmed and allowed with the same Clauses as the Charter at the Bar; and so remained undisturbed and uninterrupted all King James's Reign, and was not thought to be any way touched or moved as by the Preamble in the Statute, 43. *Elizabeth*, cap. 1. *Stat. 9.* only pointing at the Monopoly Patent complained of in that Parliament of 43 of the Queen, which I mentioned before. Then comes the Statute to much insisted on by the Defendants' Counsel, commonly called the Statute of Monopolies, *Stat. 17. James*, cap. 3. which certainly doth not at all affect the Case at the Bar. For first, This Charter is not a general Grant for the sole buying, selling, making, using of any thing within this Realm, which are the very Words of the Act: Nor does that Charter give the *English-India Company* Licence at Toleration to do so, or, except in this respect, to the *Import* or *Export* of any L. or *Statute*, which are the only things provided against by that Act. But the Parliament was formed to do the same general Cure of all such Charters as this at the Bar, as the Parliament did in 3. *James*, of this particular Charter of *East*; and therefore, so the End that that Words in the Beginning of this Act of Monopolies might not be thought to extend to Charters, or Corporations for Trade, there is a Provision, *Stat. 9.* that that Act should not extend to any Corporations, Companies, or Fellowships, &c. erected for the Maintenance, Enlargement, or ordering any Trade or Merchandise, but such as have been as they were before that Act, without any Innovation. And it is observable, that the Parliament thought that the good Reason sufficient to support these Charters that were then in being, was their being for Trade and Merchandise; but made particular Provision for the buying of Patents for Inland Commodities, viz. such as Salt, Gunpowder, Ordnance, Shot, and the like.

So that this Company was in full Possession of their Privilege of sole Trade, exclusive of others, all King James's Time, and King Charles's Time, and all the Prejudicates of the Crown were invalid; and the crown's Head too was taken off by *Traders* and *Rebels*. But the Providence of God

God being referred to our King, and relieved him with all his ancient rights, as well as referred to our ancient rights and privileges, and hence, as Henry, was in his Throne, but amongst the other considerations, that he had for the publick weal of his subjects, he considered the publick advantage of this Kingdom suffering by trade, and navigation, in one of his first thoughts he laid upon this Company. For in the 12th, 15th, he by his Letters Patent taking notice of the Charter of Queen Elizabeth, and King James, granted to the *East-India Company*, and of the injuries that was done to them by the late troubles; with the advice of his Council, and approbation of Mr. Attorney General, and a Lord-Chancellor each, he granted and confirmed to them all their privileges. The 27th of May, in the 20th of his reign, Lord-Governor then being Attorney, and my Lord-Keeper, that were in, Solmes, he confirms this Charter, and grants to the *East-India Company* other privileges, by another Charter in the 21st year of his reign, at which time the Lord-Keeper was Attorney, and Sir William Jones, Solmes, he confirms the former, and grants more privileges: and at the 24th year of his reign, by the Charter now in question, passed with the approbation of the private Attorney and Solicitor, men of great ability in these professions, and of whom, were they not present, I should say much more; the Charter to this Company was confirmed with additional privileges.

Now has this Charter passed only the approbation of his Majesty and Council, since his happy Reformation, but the Parliament has likewise taken notice of it, the Statute 14 Car. II. cap. 14. takes notice of it to be of great advantage to the publick. The 26th of the 29th of this King for poll-money, taxes them with twenty shillings for every hundred pound in Stock. In the great case between *Stewart* and the *East-India Company*, the House of Commons defended them, even to an arbitration between the two Houses.

Mr. Jones and some other Linnen-Drapers and Traders of London, taking the advantage of the heats that are frequently petitioned the House of Commons of late years, especially against the point of prerogative, did furiously attack the *East-India Company*, but without any success: and this Company was never assailed in *Windsor-Hall* till this case at the Bar. I cannot help therefore this observation, that as the King by his Charter 15th, takes notice, that the Charters granted by Queen Elizabeth and King James remained unattested till the late rebellion; so the Interlocutor against the King's prerogative in this particular, and the several conspiracies against the King's life in this last heinous conspiracy, full appeared in *Windsor-Hall* about the same time.

As to the objection I have not yet given answer to, I think they are but few: my Lord Chief-justice, cited by Mr. Palsgrave, 2 Inst. 540. where my Lord observes new things, which with fair pretences prove hurtful to the Commonwealth, and savouring they reckon, that new Corporations taking into foreign parts and home, which under the fair pretences of order and government, in conclusion end to the hindrance of traffick, and in the end produce Monopolies, does not all concern the case at the Bar. For the Charter that hath continued for an 100 years without any interruption till of late, can neither be thought a new Corporation nor hindrance of trade; and Sir Edward Coke, when he was Attorney-General, and paid this Charter, was as learned in the Law, as he was when he published that Book, and was turned out of being Chief-Justice, did not think this Charter needed that caution.

As to the case of the *Guany Patent* between *Horn* and *Joy*, that cannot affect the case at the Bar.

For first, the Judgment in that case was given upon the point of pleading, and not upon the validity of the Patent.

II. That Patent was in perfect opposition to the Statute, 7 Jac. that opened a free trade to *Spice*, and therefore could not be reformed by the King's Letters Patent, but there is no such objection to our case.

The Counsel that argued for the Defendant seemed to allow the Charters to the *Pirgusa*, *Turky*, and *England Companies*, which are exclusive of others, to be good; because they are managed by a Regulation, and not by a Joint-Stock, which surely can make no difference: for it is a Grant of a sole-trade to them, exclusive of others, as well as the case at the Bar. And 'tis as hard to get into the *Turky Company*, as it is into this; and may be more chargeable: for you cannot be a Member of the *Turky Company*, but you must be a *Freeman of the City of London*; and makes you liable to all the great offices of charge in that Government, But a freedom of the *East-India Company* may be purchased at a much easier rate; the Members of the *East-India Company* are as visible as those of the *Turky*. And though it was said, the *East-India Company* were sometimes invisible, yet, were the *Turky Company* infected with so many Interlopers as the *East-India Company* have, they would not appear so glorious and splendid as they now do, and as I heartily wish they may long continue. But the King by this Charter has referred to himself a power to destroy and alter the whole Charter, or any part thereof, so as to put in a way of regulation instead of a Joint-Stock, in such manner as he shall see his great wisdom think fit; therefore it becomes us in duty and modesty to wait till we receive his further royal pleasure therein. And whereas it was objected at the Bar, because the King cannot lay any imposition upon foreign trade, therefore he cannot restrain it;

I do not know to what end that objection was made, because it does not affect the question at the Bar; but left it may obtain the effect, that I profess was aimed at, I think it not amiss to say, that even at this day there is much more may be said in the maintenance of the King's prerogative in *Windsor-Hall*, in this case, than can be offered against his prerogative in this. But in as much as that and several other objections against the Charter proceeded from an unreasonable, as well as unmanly mind; they have of the Crown. I cannot but remember that his sacred Majesty was not so misrulerful of them. For he since his relaxation has bestowed upon his subjects more than all his predecessors, put them all

together, face the conquest, ever and. Nay, he in a moment frankly bestowed upon us more than ever he before he should be troubled with us again, for by his act of indemnity he bestowed upon his subjects their lives, liberties and estates, which were all justly and legally forfeited to him, by the late rebellion; the consideration whereof will prevent all fears and jealousies, and prevent in all loyal hearts a firm reliance, to secure their lives and fortunes, to freely bestowed upon us by him, to maintain the Crown and just Prerogatives thereof; so that it may have a perpetual continuance in this Royal Family, in a lawful succession; which I heartily pray may be long as the sun and moon endure.

From what has been said, I hope it will plainly appear, that the Law of this Land, and the Law of Nature to Nations, allow the power of making Companies to manage traffick, exclusive to all others, to be in the Crown, that this is reckoned to be *inter Regia Potestas*, that no Act of Parliament does restrain this Prerogative, that the practice of all Acts of Parliament has been accordingly; that particularly such Companies have been erected in England, and such Companies have been as great pollution of these prerogatives for such a number of years; that they have passed the approbation of many learned men; that they have been thought for the publick advantage of the Nation, by so many Kings and Princes, with the advice of their Council, both in and out of Parliament; that all Statutes and Authorities of Law that we can meet with in our Books affirm it, and none that I can meet with to the contrary.

That the *East-India Company* has, fully run the hazard, and been at great expence.

In discovering places, Erecting Forts, and keeping Forces, Settling Colonies, And making leagues and treaties abroad;

It would be against natural justice and equity, (which no municipal law can take away) for others to reap the benefit and advantage of all this: Especially since all this has been occasioned by an Act of the publick, and by the just prerogative of the Crown, under which they clear.

So that now, supposing the matter had been doubtful at the beginning (yet the contrary is evident), yet after so many years undisputed and uninterrupted prerogative of the King, and the possession of the Company past that point; and yet the laws having always been open to any subjects who conceived themselves grieved; that speech which *Joseph* records of King *Assyria*, to those Jews who after many years disconsoured to recover their lost presence, may be applied to these clamorous Interlopers.

Interrogationem off many Interlopers conspire, show me mittentem certum spiritum. Non avertit interitum dicitur, sed fidei certum.

And so the Remon answereth *Abimech*, [to them the injustice of his demands,] *Thou be required they Cities which his Predecessors for many years had sown as they.*

And Queen Elizabeth pleaded against the King of Denmark, that the rights of fishing upon the coasts of Norway and New-Bould. That neither his great-grandfather, grandfather, nor father, had exacted any thing for it; and therefore concluded it to be unjust. *Causa, Eius. fol. 100.*

So that I conclude the first, and as I conceive, the only point in this case, that Letters Patent which give licence and liberty to the Plaintiffs to exercise their sole-trade to the *Indies*, within the limits of their Grant, exclusive of all others, is a good Grant in law.

I do conceive, that the Defendant trading to the *Indies*, contrary to this Charter, may be punished by information at the face of the King; and that the action by the Plaintiffs is also well brought; and in as much as I have detained you so long upon the first point, I shall therefore upon your patience but a few words to this.

1. Therefore I conceive, the Plaintiff need not allege any special damage, no more than the Grantee of a fair, market, or any other franchise.

2. The action is brought, and grounded upon the Grant of the sole and entire trade, which, as I conceive, is a franchise the King may grant, and is like the sale of new inventions; upon which *Lee* in *Patent* actions brought by every day's experience; and the prohibiting clause is added, only to make the thing more necessary; and that Interlopers, in case they should be prosecuted at the King's fit, should be more so vexatious. And until you can imagine there be as many *East-India Companies*, as there are commoners and school-masters in England, *Allen's* case, *Cole's* case, can never be thought an objection. As to the objection in the 12 Rep. 88. *Rail Bridge*, part 2. p. 106. *Derry's* case, that admitting the Grant or Disposition to *Derry* had been good, for the sole importation of foreign Carcs; yet that being only a Disposition to the Stat. of Ed. IV. and did only exclude *Derry* from the priority of that Act, he could not maintain the action: But in this case that Grant had vested an interest, as our Grant at the Bar does, he might have brought an action, as, my Lord Chief-justice says in the next paragraph, may be collected out of *Derry's* case.

The case upon Patents of new inventions, are full authorities in the case at the Bar: And so is that case of the Abbot of *Windsor*, where the Grant of the market for three days, exclusive of others, is particularly set forth in the action. And the *Salford* man that brought cloth to London, and sold the same contrary to that Charter, is prosecuted in an action of trespass upon the case, at the face of the Abbot; and the writ concludes, (supposing the Grant good) *de vi et contra iustitiam legem nostram*; which is an authority full as to this point.

Upon the whole matter, I am of the same opinion with my brothers; and do conceive, that that Grant to the Plaintiffs of the sole trade to the *Indies*, exclusive of others, is a good Grant, and that the action is well brought:

And therefore let the Plaintiff take his Judgment.

XXXVII. The Lady Ivy's Trial, for great Part of *Shadwell*, in the County of *Middlesex*, *Dio Martis* 3 Junii, 1684. Ter. Trin. 36 Car. II. B. R. Before the Lord Chief-Justice *Jeffreys*.

Elon McGon, Plaintiff; *vs* *Dame Thersie Ivy*, Defendant.

This Day this Cause came to be tried at the Bar of the Court of King's-Bench, by a special Jury of the County of Middlesex, whose Names follow:

Middlesex Jury.

Sir Reynolds Fyfe, Bart.
Sir John Coker, Kt. and Bart.
Sir Goddard Vobry, Bart.
Sir Michael Hanger, Knt.
Sir William Cudde, Knt.
Sir Richard Doncast, Knt.

Richard Reynold, Esq.
Ralph Beveland, Esq.
Thomas Ash, Esq.
John Douglas, Esq.
Thomas Cudde, Esq.
Richard White, Esq.

Who being swayed, the Record was read to them by the Clerk of the Papers, in English, and opened by *Mr. Holt*, for the Plaintiff.

Mr. Serj. Stringer. MAY it please your Lordship, and your Gentlemen of the Jury, I am of Counsel in this Cause for the Plaintiff, and the Question will be, who her the Lady or the Plaintiff hath a good title to the Tenement in question, which are about there at four hundred tenements, near *Roadside*, in *Shadwell* Parish, and the ground in itself is, say we, the ancient Inheritance of the Church of *St. Paul's*, who have had the possession thereof for four or five hundred years*. We shall prove leases down for three hundred of years, all we come to that made to the Lessor of the Plaintiff, under whom we claim. We will begin with the last lease of *Dean Worthington*, 30 Sept. 1610, upon the foundation of the lease made by *Dean Souches*, now Lord Archbishop of *Canterbury*.

Some *Jeffs*. *Willam* (which was done) it is a Church-lease, but yet he is a witness to it.

The Lease of 30 Sept. 1610; was read.

Mr. Serj. Stringer. (Shewing to him another Deed) Did you see that Deed sealed and delivered?

Willam. Yes, Sir.

An Indenture *quodammodo* made the 25th of March, 1679, 31 Car. II. between *Thomas Noke*, Esq. the Lady *Gale*, &c. Read.

Mr. At. Gen. We admit the Allegiance.

Mr. Serj. Stringer. Then we shall prove the Lands in question were always held of the Dean of *Paul's*.

Mr. At. Gen. Ay do, show that their lands in question were so, if you can.

L. C. J. I would not interrupt you, Gentlemen, pray go your own way; but if I mistake not, you had as good begin with 5 Ed. VI. as you did last time, as I remember, I have not indeed my Book I had then, here; I fear we have not overmuch time to waste: we shall wait time at the latter end of the cause, therefore pray come close to the merits of the cause.

Mr. Serj. Stringer. We will leave it, if they require, they know it well enough.

Mr. At. Gen. Show what you can.

Mr. Serj. Stringer. In 5 Ed. VIII. the Dean of *Paul's*, *Gale*, leases to one *John Hall*.

L. C. J. But it is 5 Ed. VI. I ask for.

Mr. Serj. Stringer. 23 Feb. 5 Ed. VI. *Dean Mery* doth make a lease to *John Hall*, and *Mercator Hall*. In the Dean *Frotham*, 20 Dec. 2 and 3 Phil. and *Mor.* in confirmation of a former of that lease, lets another lease to *Mercator Hall*, and so it continued till May, 1679, and then *Dean Druce* made a lease for three lives; and upon the foundation of that in 1679, *Dean Bromfield* made a lease to *John*; and in 1679, he made another lease to *Watersham*, which was sold to *Mr. Noke*, and so came to the Lessor of the Plaintiff. First read this book.

Mr. At. Gen. What Book is it, *Mr. Serjant*?

L. C. J. Ay, tell us what it is; open it before you read it.

Clerk reads. A testament with a water-mill, *con* *Perillensis*.

L. C. J. What is it you read there?

Mr. Serj. Stringer. It is a Book that belongs to the Dean and Chapter of *St. Paul's*.

L. C. J. What Book is it? How do you prove it to be belong to the Dean and Chapter of *Paul's*?

Thos *Mr. Spencer* *was called*, but could not readily come in by reason of the Crowd. *Mr. Porter* *was sworn*.

Mr. Serj. Stringer. *Mr. Porter*, What say you to this Book?

Porter. Since the beginning of this Sun, this Book was found among the Writings of the Dean and Chapter of *Paul's*.

Mr. At. Gen. How long ago, Sir, upon your oath?

Porter. About a year ago.

L. C. J. That is but a slovenly account of such a Book as this.

Mr. Willam. It is plain, my Lord, it is not a new Book made on purpose.

L. C. J. It is plain, that in this dumpy age we live in, it is very easy to make a Book look as old as you would have it.

Mr. Serj. Stringer. We will go on to the lease made to *Mercator Hall*.

Thos *Mr. Spencer* *came in* and *was sworn*.

Mr. Willam. Pray, Sir, when did you find that Book?

Spencer. Seven years ago.

Mr. At. Gen. Where, Sir?

Spencer. Among the evidences of the Dean and Chapter of *Paul's*.

L. C. J. What is it you would read in it? An entire lease, or what?

Mr. Serj. Stringer. 'Tis a short note of a lease.

Clerk reads. A testament with a water-mill.

L. C. J. See if the Book have any title.

Clerk. No, my Lord.

* The State of the question being, Whether the seven acres in *Shadwell*, was part of the ancient Inheritance of the Dean of *St. Paul's*, to whom *Edw. Noke* was Lessor, and was a Lease of the Plaintiff, as part of *Wapping* *Shadwell*, this had been drawn by one *Forbes*, and other *Sidd* to the *Shadwell's*, under whom the *Lady Ivy* did claim.

L. C. J. Let me see it. (Which was done.)

Mr. Serj. Stringer. This 23d of Feb. 5 Ed. VI. —

L. C. J. You, *Spencer*, have you seen in any of the Books an entry of any lease made by *Dean Gale*?

Spencer. I have not observed that I have from any lease of *Dean Gale*.
L. C. J. Have you seen any lease made by *Dean Gale*, in the time of *Henry VIII.* About any of the Church's lands? I ask you the question, because I observe here in this Paper, in two places here is the Word *Dean Gale*, sent with another hand than that of the Book; but *Novell* is sent with the same hand as the other. And to *Novell* seems to have been put for the maker of this lease, as being put upon the top; when in truth he was not *Dean* till long after. Upon your oath, in whose name was that lease but that is here spoken of?

Spencer. I know not, my Lord; that is the Book I saw then.

L. C. J. Is this lease in your Book of *Leases*?

Mr. At. Gen. Pray, Gentlemen, you did produce before your original Deed of purchase, where is it now?

Mr. Willam. That Book was produced and read at the first trial.

L. C. J. What's that trial? Not that last Term.

Mr. Willam. It was in Court at that time.

L. C. J. I believe not, you are mistaken in that; for I have brought the notes I took then, and I find no such thing here.

Mr. At. Gen. They produced then the first purchase of the *Dean*.

L. C. J. Is there any lease of *Henry VIII's* time in that Book?

Spencer. I do not remember any lease of *Henry VIII's* time of this land, but I have seen that Book ever since I belonged to the *Dean's* business.

L. C. J. Have you not a Book of the succession of your *Deans*? Where was *Collet Dean*?

Mr. Willam. In 1505.

L. C. J. When was *Novell Dean*?

Mr. Willam. In 1560.

L. C. J. Then I assure you this Book is grandly suspicious.

Mr. At. Gen. They threaten a us with forgery, and I know not what; I believe it will be found on *Mr. Noke's* side.

L. C. J. If it can be come and produce a Book, and you value yourselves upon the antiquity of it, is an evidence that that land did belong to the *Dean* and Chapter, and leased by them, 5 Ed. VIII. and in that Book *Novell* is written by the same hand as the rest of the Book, as *Dean* then; but because you find *Gale* was then *Dean*, and *Novell* was still three score years after, *Novell* is turned by another hand to *Gale*; it draws a great suspicion certainly upon your Book, as it set up for a purpose.

Mr. Willam. It is true, my Lord, if we did that, it were something; but we had an old Book among the evidences of the Church, and we produce it as such; we have not altered it, therefore it cannot be done for our purpose.

L. C. J. Who knows who did it? But done it is.

Mr. At. Gen. And your title is under the *Dean* and Chapter of *Paul's*.

L. C. J. Who keeps the evidences that belong to the *Dean* and Chapter of *Paul's*?

Spencer. They are kept in the Chapter-house.

L. C. J. I am persuaded there may be an ancient Book, and this may be such an one; but it looks a little unworned in this particular. You, *Spencer*, did you look upon those two particular passages?

Spencer. No; I did not observe it.

Mr. Serj. Stringer. My Lord, our next lease in the Book recites one made by *Gale*.

Mr. At. Gen. Come, upon your oath; did not *Mr. Barnes*, or *Mr. Noke*, come to search in this Book?

Spencer. Yes, they did.

Mr. Serj. Lamin. How long ago was that?

Spencer. As to *Mr. Barnes* or *Mr. Noke* themselves, I did never see them come to search; but some list them here.

Mr. Willam. Do you believe the Book was thus as it is now, before you came at first to it?

Mr. Serj. Lamin. You say they did not come to search, whose did they come for then, to drink?

Spencer. They have come to the Officer, *Mr. Porter*, but I never saw them search.

Mr. Willam. But I ask you again, was it as when you found it first?

Spencer. I believe it was, I know of no alteration.

Mr. Serj. Stringer. But to put it out of doubt, we have this second lease, which does recite this lease of *Gale*.

Mr. Noke. Nay, my Lord, we have another piece of evidence that will testify that Book to be true, as to the foundation of it; that last lease was then made as the Book says; for we have a kind of Particular, or Catalogue of the evidences of the *Dean* and Chapter. It is an ancient writing. And in this there is mention particularly made of a lease made in 5 Ed. VIII. Pray, Sir, look upon that, and give an account of it.

Spencer. I have then this among the rest of the evidences of the *Dean* and Chapter of *Paul's*.

Mr. At. Gen. How long ago?

Spencer. I cannot directly tell.

Mr. Willam. How long do you think, upon your oath?

Spencer. I was two years ago.

Mr. At. Gen. That is since this court.

L. C. J. Ay, that is a little too lately for an ancient writing.

Mr.

Mr. Serj. Lenth. Did you see it before Mr. Nash or Mr. Bates offered a fourth share?

Answer. I cannot say particularly I did: I have seen this paper—
Mr. Serj. Paper, may it be in a Parchment, or by the hand what thus laid; How long is it since you last saw that Parchment?

Serj. I believe I have seen it this seven years; but not that I can swear to have taken any particular notice of it.

Mr. Serj. Gos. Where did you see it first, upon your oath?

Serj. Among the rest of the Deeds and Evidences that belong to the Dean and Chapter of Paul's.

Mr. Serj. Gos. Upon what occasions did you take notice of it first?

Serj. Upon searching among the writings.

Mr. Serj. Gos. Who did search with you at that time, upon your oath?

Serj. Mr. Parler.

Mr. Serj. Gos. Read it.

Mr. Serj. Gos. Was it delivered to Mr. Nash before it was brought hither?

Serj. It is brought here now among the Dean's other writings, we never use to deliver any out.

Chief Justice. This is dated a Edw. 1559. Books and other writings appertaining.

Mr. Serj. Strong. Now we will need the leaf to *Morville Hall*, wherein this is recited to have been made.

(The leaf is in the Book now read, dated 23 Feb. 5 Ed. VI. for five-and-forty years, at 101.)

Mr. Serj. Strong. Then the next leaf is in 2 Ed. 3 Phil. & Mar. (Which now read.

10 Dec. 2 Ed. 3 Phil. & Mar. from Dean Farnham to Marcellus Hall for ninety years from Michaelmas 1516.

Mr. Serj. Gos. There is a licence to alter the Mill, which we shall prove as afterwards did.

Mr. Serj. Strong. Your Lordship observes here were grounds and several houses at this time, with the Mill and Ponds, and diiches to recover the water. After this, *Morville Hall* assigned to *divers others* in the year 1516, bequeath it to his Wife *Mary Moor*; and in 1520, the *Forresters*, and hath a new lease for lives.

Mr. Serj. Gos. Show your allegations, Mr. Serjeant, from *Morville Hall*.

Mr. Serj. Strong. That we cannot do, nor need we; for we are not to deliver our title that way, but the Church's title is ours. We will show you Dean *Dean's* lease to *Mary Moor*, upon her surrender.

(Which now read, dated 14 Mar. 1520, 6 Car. I. first under, at 101. &c. married.)

Mr. Serj. Strong. Then *Mary Moor*, 16 years after, surrenders this lease, and takes a new lease for three lives in *Dean Wharf's* time, at 101. a year rent, and 40 s. interest.

(Which leaf dated 4 Aug. 1526, 6 Car. I. now read.

Then another leaf dated 5 March, 1526, 10 Car. I. by *Dean Winnell* to Samuel Whitwick, and John Winterburn, at 101. the an next rent, 40 s. before increased, and 4 s. more now increased.

Mr. Serj. Strong. Thus far it stood upon leases for lives: this lease continued till 1526, till Mr. Nash bought this land, and then he renewed it from the new Archbishop, then Dean *Strong*, who ceded the rent to Ed. during the life of *Fook*, who was the surviving life, and to 1601. after.

(Which leaf, dated 12 July, at Car. II. 1569, now read.

Mr. Serj. Strong. We have brought it hither now, my Lord, to the Letter of the Plaintiff: For we have shown this lease surrendered to Dean *Strong*, and so we have made a lease to *Gervard* and *Croft*, which we have given an account of before. And so we have shown a succession of leases from the Church, for 130 odd years.

L. C. J. The last leaf is at the rent of 240 s. a year, I think.

Mr. Serj. Strong. Yes, my Lord.

Mr. Serj. Attorney. Have you done, Gentlemen?

Mr. Serj. Strong. Yes, we have, till you give us further occasion, Brother.

Mr. Serj. Attorney. Then, may it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this cause for the Defendant, my Lady *Joy*.

The Plaintiff has given you a sort of evidence for a title, but the truth of it is, all that they say will not make a conclusion, such as they would have from their Privileges; For all that they have proved, is, that the Deans of Paul's, successively one after another, have made leases. They did in the beginning tell you, they had had this land hundreds of years: But what have they had? and what leases have they made? But only a mill, a bakehouse, a trough of lead, and all houses, lands, meadows and pasture thereto belonging. We do not deny but that they are to have a mill; their leases are also, even the new ones do mostly follow the track and words that were said in Queen *Mary* and Henry the Eighth's times. But here is the truth of our case: That the Dean and Chapter had a mill, we agree; say, more than that, we agree that they have eighteen acres that lie on the North side of *Ratcliff high-way*; and also that they have another parcel of land, called the *Lynden*. That this may be understood, we now leave to deliver maps to the Court and the Jury.

Mr. Serj. Attorney. And we desire ours may be first too.

Mr. J. Wilkes. Aye, deliver in your maps, this is the only fit place for them.

(Which now done on both sides.)

Mr. Serj. Attorney. Then, my Lord, I will go on. We agree, I say, they had a mill, which is now taken down and put in another place. We shall show them where it did stand, and that was no part of the land now in question. The Jury have seen the place, and I hope have had a satisfactory view of it. There was once a mill standing, and there was once a pond, but that mill and pond do stand elsewhere. The land in question, we say, was anciently marsh ground, and subject to the overflowing of the Water, and it is so to this day. In H. VIII's time, it was by one *Fordwylf*, a Dutchman, drained. This, by Act of Parliament, *Richard Hill* was made owner of, and he conveyed it to *Sopdian*, who was the Defendant's ancestor, and who he bought it. And the boundaries are set down in that, and the subsequent conveyances, which cannot possibly stand with those that their mill is said to stand in. We shall then by several Records the Queen had a title to it by a conveyance in way of mortgage to her; and this afterwards was conveyed back again to the ancestor of my Lady *Joy*. We yield they had a mill, and they have increased the rent sufficiently

upon it, not to need other men's land. They have houses built upon it; I know not indeed how much, but I think it is now 1000 l. a year that it yields to them. If then we can demonstrably show you where our ground is, and where their's is, and if we affirm our title by Records and good Conveyances, then by a pretence to a mill, I hope they shall not grudge us, or take away all our land.

Mr. Serj. Gos. My Lord, and Gentlemen of the Jury, I leave leave to answer the Evidence that has been given, before I enter upon my title.

They have spent a great deal of time to derive down a title to the Dean and Chapter of Paul's, to a mill, a bake-house, and some little ground thereto belonging. And truly, as Mr. Serjeant says, no man ever questioned the Dean and Chapter for their mill, and bake-house, and leaden trough. But the thing in question is, seven acres and an half of land, which in the memory of man was marsh ground; if you observed it, Gentlemen, upon the view how it lies, you know the North bound is the Dean's *Lynden*, the South bound is the *Thames*, the West bound *Fordwylf*, and the East bound is the *Edly* ground that is called *Cock-hill*. And we lay as to all this land, it is none of the Dean and Chapter's, nor ever did pay, or was enjoyed by this lease; but we shall show you it was under another lease.

I shall observe, that it is very strange upon their own evidence, that a mill, *can* *Percey*, should pass seven acres of ground; and a mill that was demolished in long ago in Queen *Mary's* time, (for we shall plainly show you) and that their land, concerning it, *can* *Percey*, should not have a survey taken of them, and out of some figure of the land, that they might know what was theirs, and what their neighbours. For your Lordship and the Jury may observe, as all the leases and conveyances down to this time, in Dean *Gale's* lease, and onward, there was nothing mentioned but a mill with the appurtenances, or a tenement with the appurtenances. But there have not one good boundary of their lands; and really it cannot be presumed the Dean and Chapter should be so ignorant.

Besides, in the ancient lease that they produced of Ed. VI's time, there was a covenant to pay the quit-rent, as for lands held of the manor of *Stropen*.

And we did expect that they would have brought forth the Rolls and Records of that manor; and out of some figure, there remaining, would have given a particular inventory of what lands belong to the Dean, and what do not.

But in truth, we lay this is a properly manor land, for that will be your question, Gentlemen, that you are to try, I believe, or lay: Whether these seven acres, that bounded on *Fordwylf*, *West* on the *Thames*, *South* on the *Edly*, and *East* on the *Edly*, be manor land, or not.

The Dean and Chapter have given evidence of some leases, which upon the surrender were delivered up to them; but there are none produced, they only are in evidence in their Books. Now we shall conclude that this mill of theirs was an over-mill; for there is mention made of a barren trough, which is the only proper instrument of an over-mill. Therefore we will first fight (because they themselves will not) what is there; and then we desire not to give you satisfaction that this was never any of them, but the undoubted inheritance of the *Archbishop*; and not a foot of it belongs to any other man living. But further, since they say now, we shall produce a piece of evidence, which indeed we must thank Mr. Nash for, for blabbing at about that he had a survey of the manor of *Stropen*, which would do our work, put us upon searching there for it; and we have it here, and there you will find a particular of all the Dean's lands, and of all quit-rents. And the particulars are thus described in that Book, (which shows that there was a tenement that stood by the mill, and that paid a quit-rent, and the other lands came under that quit-rent): Twenty acres, called *Shadwell* field, that lye on the North-side of *Ratcliff high-way*, known at this day, and all this piece of ground, of twenty acres, is built upon and improved; which was one part of the land that came under a quit-rent, but not pretended to be any part of this. The next is five acres, called the *Lynden*, and it appears by the Record to be five acres, and so it is measured now. *Ratcliff high-way* went on the top of the hill, and then it called the *Lynden* way, not imposed nor built upon; and it exactly abated according to our Records, and described by acres to an acre. Then comes the third parcel, and that only concerns you to acquiesce of, whether these seven acres and an half be parcel of that? And that is described in the Record to be a tenement, called *Dorset-hill*, which is a bake-house with a mill, and the leaden trough, the appurtenances of the mill, at the rent of 3 s. and 4 d. There are all the parcels named of the Dean and Chapter's lands. And at the last trial when they produced the deed of purchase, whereby this was conveyed to the Dean, which I think was in H. III's time, it yielded but 4 s. a year in the whole, and now in time it is come to 2000 s. a year, without this great goblet, which they pretend that the south of the former *Deans*, in this place where the mill then lately stood, was left to *John* *Carter*, Clerk-maker. There are in that place, at this day, lands and houses that yield the Dean and Chapter an hundred pounds a year, distinct from the *Lynden* and the North ground of *Ratcliff high-way*, and that is a very good improvement for a mill, and a bake-house, and a leaden trough, and a ditch for the water. Now by their lease in 1520, they recite that the mill was not worth the keeping up; and according to the power given them by the lease, 2 Ed. 3 Phil. & Mar. to pull down the mill, it was pulled down and built upon, and it came to yield them 200 l. a year, as it doth at this day. After this we shall call witnesses to set forth, that in this place, in the *Edly* end of *Cock-hill*, in the memory of man, there was found the floor of the old mill; and there are thofe living that can attest it. So we shall show they are sitting in a wrong pool; they have sufficient to answer their deed of purchase; and all the evidence that hath been given you, will appear to be

Deeds to certify, the same with an annexed nothing, and to take up the same, that we find go yet a Step further, and they beyond all peradventure, that this land in question was marsh-ground. And the other side sayeth, that if it be marsh-ground, the Dean and Chapter have no interest in it, never presented to a foot of it, nor doth any title of theirs evidence mention marsh-ground. And truly we will admit to it, because we do not marsh-ground we have nothing to do with it. So that, Gentlemen, your great question is, Whether this be marsh-ground, or not? And the reason the main of the question will be about the East boundary alone, and no other: For that *Wright* was marsh-ground South on the Thames, North on the London, and West on Sir *Colborne's*, is no question, nor ever was in all the trials that have been. Therefore the only point that the evidence is to be applied unto, is about the *Edler's* boundary. That we lay to be *Col-Hill*, anciently called the *Hilly-way*, or *Middle-way*, now *Col-Hill*, and in the Records of *Seymour* manor, it is called *Correll-Hill*. And it is a rising hilly ground, it appears to be so to this day; I appeal to the Jury who have been in it. Now that this was marsh-ground, and the inheritance of the *Stephen's*, we shall prove by these *Shops*. First, We shall produce an Act of Parliament made in 37 Hen. VIII. wherein the bounds appear to be plainly the same as now we lay they are at this day: only now it is all built, that is all the difference, and the marsh doth thence contain 120 acres. Now by that Act, the whole marsh is defined, as to one moiety, in *Richard Hill*, an assignee of *Paradise* the Dutchman, who had drained it, and for his pains was to have one half; and he agreed with the paragonages, among whom *Stephen* was one, and had 45 acres, and particularly this land. So that the Dean of *Paul's* must derive a title from this Act, if he will have the land. But we shall show how they colour their position. Afterwards *Richard Hill*, in 11 Nov. 37 Hen. VIII. he doth make a lease to the Dean and Chapter, miller, and so the thirty-four years, wherein you will exactly be the boundaries of the Act as they stand. And he had leased it to the Dean's miller, he passeth away the inheritance to *Thomas St. John*, in time, 26 Apr. 6 Ed. VI. *Mervin Hall* the miller, after *Stephen* had obtained the inheritance upon agreement between them, gets a lease from *Stephen* of 128 years of the lands in question, as you may see by the bounds they are exactly the same; and this was in time 20 Apr. 6 Ed. VI. So the miller had now ground on both sides the way that is called *Col-Hill*, on the East side by lease from *Hill*, on the West side by lease from *Stephen*. I then in point of time we shall come to show the lease made to *Roper*. For *Mr. Atty*, after he had this long lease from *Stephen*, 30 Nov. 5 & 6 Ph. & M. Ed. both demise the land in question to *Rick of Roper*, for twenty-four years; and we shall show that in all the Queens's time *Roper* was tenant. Then *John Hill*, who was the Heir of *Richard Hill*, in 12 Nov. 5 & 6 Ph. & M. by deed, and afterwards 3 Ed. by fine and common recovery, conveys all their lands particularly by name, and re-leases them to *John and Mervin* *Stephen*, and the heirs of *John*; and do lodged the inheritance in the *Stephen's*, all but that which was thus out in a long lease to *Mervin Hall*. We shall prove that before *Richard Hill* died, he entered into a Statute to *Find* and *Solve* for a great sum of money; and this Statute comes to be extended 3 Ed. and thence this land, notwithstanding their lease, is seized and extended as *Hill's* lands. We shall show all this land upon a commission of *Writ*, had a survey taken of it. When we have shown all these Records, and proved that this is marsh-ground, and not a witness of theirs but still acknowledge it to be marsh-ground (for that part of *Paul's* land was raised at least nine feet, and so proportionably was the rest of the ground; and it appears at this day, that upon a high tide all their cellars are overflows), I think that you will make no doubt, whether this be our land or no. And to proceed in this order that I have opened, we will first lead you the survey. There was our thing I forgot about this time, and so we will return to it.

Mr. Serj. Strang. What is it you read Sir?

Mr. C. J. What do you begin with, Mr. Attorney?

Mr. Atty. Gen. Your Lordship observes they show a lease from Dean *Fulkens*, the 10 Dec. 3 & 4 of Ph. & M. Now on the 22 Dec. in the same year, we shall find *Mervin Hall*, by lease to *Carter*, butts it upon the East side of the mill.

Mr. C. J. I took the notes the last time of your evidence, and it begin in H. V. 11th time.

Mr. Atty. Gen. My Lord, when we come to our side, we shall go on in the same method we did then; but now we are only showing where the lands are.

Mr. C. J. Go your own way.

Mr. Atty. Gen. This Indenture, made the 22 day of December, in the second and third years of the reigns of our sovereign Lord and Lady *Philip and Mary*, by the Grace of God, King and Queen of England, Spain, France, both the Indies, Jerusalem, and Ireland, Defenders of the Faith, Arch-Bishops of Avinion, Dukes of Burgundy, Milan and Brabant; Counts of Hainault, Flanders, and Tyrol; between *Mervin Hall* of Ratcliff, miller, of the one part, and *John Carter* of Ratcliff, son-master of *Stowmarket*, of the other part; witnesseth, that *Mervin Hall* hath purchased, granted, and to farm let unto the said *John Carter*, that his wharf lying in *Ratcliff*, where late the mill flood, called *Ratcliff* mill, adjoining on the West upon the East side of the mill-ditch, above the mill-dam, reaching from thence *Baylyard* 30 foot, and from the North-east corner of the said mill-dam, Southward to the River of *Thames*, 30 foot; to have and to hold all and whole the said wharf, as it is before specified, with all commodities and profits belonging to the same, to the said *John Carter*, to his heirs, executors, and assigns, from the feast of St. Mary the Virgin, immediately following the date of these presents, until the end and term of 30 years.

Mr. C. J. This lease made the last time.

Mr. Serj. Strang. Yes, it was so, My Lord.

Mr. Atty. Gen. —to be fully complete and ended, yielding and paying therefor for the same, unto the said *Mervin Hall*, his heirs, executors, and assigns, ten bushells of lawful money of England yearly; that is to say, at the feast of the Annunciation of St. Mary the Virgin. And if it happens the said rent to be behind and unpaid at the said feast, in part or in all, by the space of one fortnight, and lawfully seized of the said *John Carter*, his executors, and assigns, then it shall be lawful to the said *Mervin Hall*, his heirs, executors, and assigns, to distress for his said rent to be being behind, and the distress to continue until such time as the said rent with the arrears, be fully paid and paid.

Mr. C. J. For how many years is that?—Mr. Atty. Gen. Thirty years.

Mr. C. J. What is denied by this bill?

Mr. Atty. Gen. Read the Parliament again.

Mr. Serj. Strang. My Lord, we would gladly know where they had this lease, that if it may appear whence it came; for we know they have an excellent art at hiding out of Deeds.

Mr. C. J. Ay, come, show where you had it. Let me see it.

Mr. Atty. Gen. We did produce it at the last trial, and at the first too.

Mr. C. J. But that this Jury knows nothing of, and they call for some account of it on the other side.

Mr. Atty. Gen. My Lord, do you know any thing of that Deed?

When did you first see it?

Mr. Williams. And where had you it?

Mr. Atty. Gen. I had it in a garret, in a kind of a nook, about six foot long, and three foot and an half wide, in my own house, in the garret among other writings.

Mr. C. J. How came you to have them?

Mr. Atty. Gen. As I was Executor to *Winterson*.

Mr. Atty. Gen. My Lord, will you tell upon what occasion you loaned them and found them?

Mr. Serj. Strang. Ay, pray give an account of the whole.

Mr. Atty. Gen. My Lord, upon the 24 of August, 1682, was the first time I ever saw my Lady Ivy to my knowledge; and she was informed by one Mr. *Fisher*, that I had several writings of *Winterson's*: I told her I had so, and my Lady desired me to search among them, all there were any writings that concerned *Stephen's* estate; I told her it would take up a month's time to look them all over, for there was a great quantity of them. She said, I would do her a great kindness, if I would look; I promised her I would: And upon the fourth of September, I think I found the Deed.

Mr. C. J. How was *Winterson* concerned?

Mr. Atty. Gen. They have shewn that he was owner of the land once.

Mr. Williams. Did you ever read over that lease?

Mr. C. J. I ask you again, how was *Winterson* concerned?

Mr. Atty. Gen. He was partner with *Wright*, who sold the estate to Mr. *Noel*.

Mr. Serj. Gen. *Wright* sold it to *Noel*, *Winterson* died, and this man was his Executor, and so he came to the writings.

Mr. Atty. Gen. But pray, Mr. *Knox*, tell us, were these writings ever shewn to Mr. *Noel*?

Mr. Atty. Gen. In the year 1680, when Mr. *Noel* bought this Estate of my Uncle *Wright*, the writings were all to be looked over; and upon Mr. *Noel's* request, all the writings were sent to his Council, a Gentleman in *Gray's-Inn*, one *Cope*, I think his name was, or something like it; and there they were left three months, and I believe in my soul that Deed was among them.

Mr. Atty. Gen. Were they brought back again?

Mr. Atty. Gen. There were two hampers brought back.

Mr. Atty. Gen. Had you any discourse with Mr. *Noel* about this business?

Mr. Atty. Gen. I was arrested upon his account in an action of 2000 l. and he presently after came and got me off from that action, and told me, Mr. *Knox*, I am sorry you were arrested upon my account. So as I say, Sir, said I, did he? I do believe really, you found that Deed; I did so, Sir, said I: But say he, pray will you answer me one question seriously? That I will, two or three, if I can, Sir, said I. Say he, did not my Lady Ivy, or *Baylyer*, sell the Deed into your hands? No, said I, for before ever I saw either of them, I had seen that Deed. Then I am undone, said he.

Mr. Williams. Who was by, pray, when this discourse passed between you and Mr. *Noel*?—Mr. *Knox*. There was none but he and I.

Mr. Williams. It was at the tavern; Mr. *Noel*, I suppose, will not deny it.

Mr. C. J. Will he not? Will you take his word for it?

Mr. Atty. Gen. I do say, I found that Deed there.

Mr. C. J. Read it, read the demise. But, Mr. *Knox*, let me ask you a question or two: As I understood, you said my Lady Ivy desired you to look among *Winterson's* writings, for deeds that concerned *Stephen's* Estate?—Mr. *Knox*. Yes, my Lord.

Mr. C. J. Where was that?—Mr. *Knox*. That was at her house.

Mr. C. J. And when did you find this deed?

Mr. Atty. Gen. I found the deed in September, before any body came to look with me, or was in the place with me.

Mr. C. J. Was there any body with you, when you found the deed?

Mr. *Knox*. No.

Mr. C. J. Then you found it yourself?—Mr. *Knox*. Yes.

Mr. C. J. Did you read it?

Mr. Atty. Gen. I did the outside; what was I concerned further?

Mr. C. J. Nay, no need to be angry; when thou art so full, thou speakest to call a man can scarce understand thee; answer my question fairly: you say you read it, what part was it you read?

Mr. Atty. Gen. The backside, the outside.

Mr. Williams. I thought you had meant the inside of the outside.

Mr. C. J. How did you gather by reading the outside, that it concerned my Lady Ivy?—Mr. *Knox*. I only read *Stephen's* name.

Mr. C. J. *Stephen's* name, you say?

Mr. Atty. Gen. What deed do you allude upon?

Mr. C. J. That deed, the only deed you have seen here. What is your Christian name?

Mr. *Knox*. *Stephen Knox*.

Mr. C. J. If I mislook you, I beg your pardon: your question is concerning this very deed now shewn to you.

Mr. Atty. Gen. I thought you had meant the lease of 128 years.

Mr. C. J. Well then, let that pass for a mistake; I would know of you now something concerning this deed. Look upon it—(which he did)—upon your oath, when law you that deed did?

Mr. Atty. Gen. I cannot say what day it was.

Mr. C. J. But, look you, if I mislook you not (if I did, I ask your pardon again), did not you say you found that very deed among a great many other writings of *Winterson's*, in a room, so many foot long, and so many foot wide, in your garret? Did not you say, that in time you saw my Lady Ivy first, upon the 24 of August, 82, that you found that deed in your possession? And did not you tell us, that you did believe, in your conference, that in the year 1680, Mr. *Noel* hid this writing, among others, sent to the Chamber of such a Gentleman in *Gray's-Inn*, that

that they remained there these months, and then were brought back again upon you; and you believe as your confidence that was one of them? And did not you say, when I asked you, how you came to know this belonged to my Lady Jay, you said, because my Lady Jay had spoke to you, so look if there was any thing belonging to Stephen, and you read the outside of the deed, and found Stephen's name, and so you knew it so concern her? Did not you say all this?

Kewley. I believe I did.

L. C. J. Now tell me then by the outside of that deed, how thou canst tell that it belonged to Stephen? For if thou canst, thou art most crafty when any body here, I believe.

Kewley. I thought it had been the long lease, for that has Stephen on the outside.

L. C. J. Well, let that pass for a mistake; we must now begin again upon a new account. Where wilt thou say that deed?

Kewley. In September, 1682.

L. C. J. How do you know that?—*Kewley.* I put my hand to it.

L. C. J. Did you read the inside of that deed?

Kewley. No, I did not.

L. C. J. Look you then, we ask you how you came to know it was a deed belonging to Stephen?

Kewley. I read the backside, and put my hand to it.

L. C. J. How came you to put your hand to this deed as belonging to Stephen, when you never looked into the deed?

Kewley. When I found this deed to have written upon it *Marcus Hall* I did believe it was something that concerned the *Stephen's*. *L. C. J.* Let us see for the deed now—(which now draw)—You say that was the reason upon your oath?—*Kewley.* Yes, it was.

L. C. J. Then look upon it again, and do not be surprised, but let us have the truth come out, in God's name. Was that the reason?

Kewley. It was, my Lord.

L. C. J. I would fain see Mr. Sattin, I have a question to ask him.

Mr. At. Gen. He is here, my Lord.

L. C. J. Give Mr. Sattin his oath—(which now draw)—Look upon the outside of that deed, and upon your oath tell us what hand-writing that is.

Sattin. All but the word (*Lease*) is my hand-writing.

L. C. J. Are not the words *Marcus Hall* all of your hand-writing?

Sattin. It is.

L. C. J. Then how couldst thou know this to belong to the *Stephen's* by the words *Marcus Hall*, when you first discovered this deed in September, 1682, and you found it by yourself, and put your hand to it; and yet that *Marcus Hall* be written by Mr. Sattin, which must be after that time?

Mr. At. Gen. He says he knows it, because he put his hand to it; I suppose he read something of the inside.

L. C. J. He said the backside, the outside; I did not read the inside.

Mr. At. Gen. My Lord, I desire our evidence may not be anticipated. I will tell you by the way, your evidence anticipate themselves: And this fellow, *Kewley*, without any more ado, has proved himself an evasive, notorious knave. And of your evidence will blunder and spoil themselves, I cannot tell how to help it. I know, as soon as I saw the deed, that that was *Sattin's* hand; I knew his hand, as well as that you are Mr. Attorney.

Mr. At. Gen. Pray, my Lord, give me leave to ask him a question, which I hope may clear all this matter, for it is plain the man is mistaken.

L. C. J. *Marcus Hall*. Yes, I assure you very goodly. Ask him what question you will, but if he should swear as long as Sir John Falstaff fought, I would never believe a word he says.

Mr. At. Gen. Did you look into the inside of one of the deeds?

Kewley. Yes, I did.

Mr. At. Gen. Can you tell which you looked into the inside of, and which you did not?

Kewley. I believe and found others I did, but I cannot particularly tell.

Mr. At. Gen. Then, my Lord, here is the case: Here are multitudes of deeds, and a man looks on the inside of some, and the outside of others; it is possible for a man to peep positively to all the particular deeds, without being liable to mistake?

L. C. J. Mr. Solicitor, you say well; if he had said, I looked upon the outside of some, and the inside of others, and wherever I saw either on the outside, or in the inside the name of *Stephen*, or *Marcus Hall*, I laid them by, and thought they might concern my Lady Jay; that had been something. But when he comes to be asked about this particular deed, and he upon his oath shall declare that to be the reason why he thought it belonged to Stephen, because of the name of *Marcus Hall* on the outside, and never read any part of the inside, when *Sattin* wrote *Marcus Hall* was written by him, what would you have a man say?

Mr. At. Gen. My Lord, I have said this to say, if there were never a deed delivered by *Kewley* to my Lady Jay, or *Sattin*, where *Marcus Hall's* name was written on the backside of it, but by Mr. Sattin; I confess it were a strong objection. But where there are other deeds, and a great many, a man may easily be mistaken. It is impossible for any man, as a multitude of deeds that he finds among a great parcel, and delivers many of them out, so take it upon his memory particularly, which he looked on the inside of, and which he looked on the backside or outside of.

L. C. J. Did he not give it as a particular reason of his knowledge, that they belonged to my Lady Jay? For wherever he saw *Marcus Hall* on the outside, he thought that belonged to her.

Mr. At. Gen. Wherever he saw those names, that is either in the inside or outside.

L. C. J. Under favour, Sir, he did not say so; but positively said, he knew it by that name. And you shall never argue me into a belief, that it is impossible for a man to give a true reason, if he have one, for his remembrance of a thing.

Mr. At. Gen. I beg your pardon, my Lord; as I apprehend him, he feared he looked into the inside of some, and the outside of others, and did not write a great many of them.

L. C. J. And I beg your pardon, Mr. Solicitor, I know what he spoke as well as any body else. It indeed he had sworn constantly, and with oath, that he had been taken for a liar, or a mistake.

Mr. At. Gen.

Mr. At. Gen. My Lord, we must leave it upon its own weight, but we are not come to our title yet: I have the deed in my hand, which is a very old one, and therefore needs not such exact proof. His majesty, we do own it, and I must appeal to the Court, whether a man may not be mistaken in a great multitude of deeds.

L. C. J. Well now, after all this is done, let him give us account how he came to know that to belong to Stephen, or my Lady Jay, it be cast. I speak it not to prejudice your cause, but only to have the truth come out. But for the witness that swears, it may affect him. I assure you. Give him the deed, and let him look upon it—Look upon the inside, and look upon the outside too.

Kewley. I believe, my Lord, upon better consideration, I have read this deed before now.

L. C. J. Very well, and yet you swear the contrary just now.

Kewley. I was in a maze, my Lord.

L. C. J. I am sure thou wast wildly.

Mr. At. Gen. Pray what deed did you take it to be at first?

Kewley. The lease of 128 Years.

L. C. J. Prayers read it now to us.

Kewley Reads.—That indenture made the 22d day of Dec.—

L. C. J. Between whom?

Kewley Reads.—Between *Marcus Hall* of Reddyff, miller, of the one part, and *John Carter*, our master, of the other part, witnesseth, that the said *Marcus Hall* hath devised, granted, sold and sold to the said *John Carter*, all that wharf lying at Reddyff, where late a mill stood, called *Reddyff mill*.

L. C. J. Can you say you ever read to much before?

Kewley. I believe I did.

L. C. J. When was it?—*Kewley.* In September, 1682.

L. C. J. Then you read it before you showed it to my Lady Jay?

Kewley. Yes, my Lord.

L. C. J. And you found what the contents were by reading?

Kewley. Yes, my Lord.

L. C. J. Did you read it through?—*Kewley.* No, I did not, I believe.

L. C. J. How far do you think you read?

Kewley. As far as I have read now.

L. C. J. Did you find any thing there of the name of Stephen?

Kewley. No, not in that I did not.

L. C. J. I would desire to know of you, who it was that came to my Lady Jay, to inform her you had such and such writings?

Kewley. It was one Mr. Ficker, about a trial that was to have been two or three years ago, at the Bar of the Court of King's Bench here; but the cause did not then go on. After that Mr. Ficker did tell my Lady, that one *Kewley* had a great company of writings that were *Waterhouse's*; and he desired him that he would please to talk with me, so he if I could do let any kindness or service in any of those deeds. The first time that I saw his was the 2d of August, as near as I can remember, and then I told her, it was *Waterhouse's*, and had in great many writings. Said he, do you know the hand of Stephen? if you do, and can find any writings that relate to Stephen, you will do me a great kindness.

L. C. J. Did he name any body else to you?

Kewley. He named one *Lee*, and one *Barker*, and one *Heldin*, and that several others; I do not remember all.

L. C. J. Was there any mention made of one *Collier*?—*Kewley.* No.

L. C. J. Was there of one *Dexter*?—*Kewley.* Of one *Lee* there was.

L. C. J. Of one *Falmer*?—*Kewley.* No.

L. C. J. Of one *Alm*?—*Kewley.* No.

L. C. J. Of one *John Hall*?—*Kewley.* No.

L. C. J. Was there any mention made of any *Hall*?

Kewley. Yes, there was.

L. C. J. What *Hall* did he speak of?

Kewley. I am not certain whether any *Hall* was named or no.

Mr. At. Gen. He says, he is sure there was of Stephen, and several others, but not of any *Hall*.

L. C. J. He does so, Mr. Attorney. But now I would ask him this question. There were no mention of any *Hall*, how came you to find that that lease in *Marcus Hall* to *Carter* should affect Stephen, or my Lady Jay?

Kewley. My Lord, I will give you an account of that.

L. C. J. Ay, do you can.

Kewley. This was at the first time that I saw my Lady Jay, that this discourse was between us; upon another discourse, at another time, *Hall* was mentioned to me.

L. C. J. How many names did he tell you of at first?

Kewley. I cannot remember them all.

L. C. J. Let me remember as particularly as can be the 2d of August; to be the first time that he saw my Lady Jay; and then the spoke to him of looking for writings that concerned Stephen, and *Lee*, and *Barker*; and he remembered such a day, the fourth of Sept. 1682, he found the deeds; but he will not give any account how he came to know, by *Hall's* name, that this belonged to Stephen. I would fain know when you first heard of the name of the *Hall*?—*Kewley.* It was all within a month's time.

L. C. J. Who was it first spoke to you to enquire about the *Hall*?

Kewley. My Lady Jay spoke to me about *Hall* when I gave her account of some deeds I had found.

L. C. J. How often did you look over the writings?

Kewley. Several times.

L. C. J. The first time, did you give my Lady Jay an account that you had found any thing?

Kewley. Yes, I gave her an account of the lease of 128 years.

L. C. J. Did you find nothing else but that?

Kewley. Yes.

L. C. J. What did you find else?

Kewley. Several; I cannot give an account of all.

L. C. J. Did you find that lease, or this deed first?—*Kewley.* The lease.

L. C. J. When did you first find that deed?

Kewley. The 22d of September I found the lease, and within fourteen or fifteen days after I found the deed.

L. C. J. How many deeds did you find out?—*Kewley.* Half a score.

L. C. J. Who was by when you found the deeds the second time?

Kewley. 4 E

Kensel. When I had loved the lease for 128 years, I hid it by, and needed further for other things, and found a mortgage which concerned myself, and that made me more eager to look for what might concern me besides, that I was not so careful as I should have been of the lease of 128 years, but missed it among the writings again. But I told my Lady I had found such a deed, and she ordered Mr. Banger to help me to find it again.

L. C. J. Pardon me, I am not sure. Who first put you in mind of looking after the *Hill*?—*Kensel.* My Lady Ivy.

L. C. J. Was any body by, when she spoke to you to look after the *Hill*?—*Kensel.* Yes, Mr. Banger was by.

L. C. J. Who else?—*Kensel.* Several of my Lady's servants.

L. C. J. Name some of them that were by.

Kensel. There was Mr. Banger's wife and his daughter by.

L. C. J. What day was it my Lady Ivy first spoke to you to look after it? *Hill*?—*Kensel.* Within a week after I first her.

L. C. J. Was it before you found the lease you speak of?

Kensel. Yes, it was before.

L. C. J. How comes it to pass then, that you did not find it at the first looking, which was the 4th of September, when you found that lease, you say?

Mr. At. Gen. We must lay aside the testimony of this man.

L. C. J. Ay, so you had need.

Mr. At. Gen. Pray have the deed in Court, we shall have Mr. Nicol too busy with it self.

Mr. At. Gen. We shall desire your Lordship to consider all the use we make of this deed is to prove, that the mill was removed to another place.

L. C. J. I do not know what it proves, but if you had kept your witness *Kensel* in the mill, I think you had done better than brought him hither.

Mr. At. Gen. Sweet Mr. Banger and Mr. Clerk. *(Which was done.)*

Mr. At. Gen. Did you examine that with the Roll, Sir? *(Shewing the paper.)*

C. Clerk. Yes Sir, I did examine that with the Book that Mr. Nicol shewed me; I think they say he is steward of the manor of *Stapley*; he read in the book, and I read the copy; and it is a true copy of a survey of that manor, taken 25 Edw.

Mr. At. Gen. I intend you have the books of the manor here; pray let them be produced.

Mr. Willmors. You are merry, Mr. Attorney; if it is a true copy, pray let it be read.

Clerk read. The Dean of *St. Paul's* holds freely of fee or held, containing by estimation—

L. C. J. Who is Lord of the manor of *Stapley* now?

Mr. Paul. My Lady *Wentworth* is Lady of the manor.

Clerk read. The Dean of *St. Paul's* holds—

L. C. J. This bounds it on the East, on the Dean and Chapter of *Paul's* lands, and so doth you go on.

Mr. Willmors. Let them go on, my Lord.

Mr. At. Gen. With submission, these are our exact boundaries.

L. C. J. Well, go on.

Mr. At. Gen. We shall go on; and with submission these bounds exactly agree with the bounds that are set by the Act of Parliament for dividing the marsh. Here is speaking that we can see that they can claim both the mill and lake-heads, and they are all bounded on the *West* by *St. Paul's* Marsh; and the *Leys* are bounded in, part upon the North, and in part upon the *West*; and there was a little part of the marsh did run into the North bounds. But now we shall come to our evidence; and first we shall shew the Act of Parliament.

Which being Anno 25 H. VIII. was read.

Mr. At. Gen. Next we shall shew *Richard Hill's* conveyance by mortgage, to *Frodd* and *Schope*.

Which Indenture of Mortgage was read.

Clerk read. This Indenture made the eighth day of November, in the 32d year of our Sovereign Lord King Henry the eighth, between *Richard Hill* citizen and mercer of London, on the one party, and *Anthony Frodd* and *Henry Schope*, Merchants, of the other party; witnesseth, That where the said *Richard* before time was indebted unto the said *Anthony Frodd* and *H. Schope* in the sum of 56*l.* of lawful money of England, whereof they of their free will have pardoned 36*l.*

The said *Richard Hill* by these presents

All that money of lawful money being 20*l.* acres, lying and being to *Radcliffe* Town, on the party of the East; so *Griff* Mill by the *Hamlet*, on the party of the West; on the high-way, leading from *Lawden* to *Radcliffe* on the party of the North; and on the river of *Thames*, on the party of the South given and assured to the said *Richard Hill*, by authority of Parliament, in the 25th year of the most noble Reign

to have and to hold—

Mr. At. Gen. This doth sell the lands in question with others in *Frodd* and *Salvage*, as a necessity for their money.

Mr. At. Gen. Now we shall shew a lease from *Hill* to *Mercator Hall*.

Clerk read. This Indenture made the eleventh day of November, in the 32d year of the reign of Henry the eighth, between *Richard Hill* citizen and mercer of London, of the one party, and *Mercator Hall* miller, of the other party; witnesseth, That the said *Richard Hill*, for the sum of 56 pounds of lawful money of England, to him in hand paid, at the enrolling and delivery hereof, whereof the said *Richard Hill* hereby acknowledged himself to be fully satisfied, contented and paid; and whereof he doth clearly acquit and discharge the said *Mercator Hall*, his Executors and Administrators by these presents, hath demised, granted, and to farm letten, and by these presents doth demise, grant, and to farm letten unto the said *Mercator Hall*, a parcel of marsh-ground, lying and being at the East end of the marsh that buttin on *Radcliffe* hilly marsh wall-bank, or wall belonging and the well *Schope*, consisting by estimation eleven acres and a half, more or less, abutting on *Thames* Wall, on the party of the South; to the lands called the *Dun's Leys*, on the party of the North; and on the wall that reaches from the *Leys* to the Island, by the pond on the West, with all the foreland and fall.

All which marsh-land is in the Parish of *St. Andrew* to have and to hold

the marsh-land foreland and fall to the said *Mercator Hall*, from the feast of the Annunciation of *St. Mary* the Virgin next coming, for thirty and four years—

Mr. At. Gen. This was a lease made to their mother, and contains eleven acres and half an acre, which we shall shew is justly the contents of our land. Next then we shall come to the conveyance made to *Thomas Staphin*, which will bring us to our title.

L. C. J. Read the reversion of that lease.

Clerk read. Yielding and paying therefor yearly, and every year, unto the said *Richard Hill*, his Executors and Assigns, three pounds of good and lawful money of England, in four terms of the year; that is to say, the feast of the Nativity of *St. John* the Baptist, *St. Michael* the Archangel, the Birth of our Lord, and the Annunciation of *St. Mary* the Virgin.

Mr. S. Pembroke. Pray, my Lord, we desire they may give some account of this lease, where they had it, and how they came by it.

Mr. At. Gen. You have had it in your hands; you see what it is.

Mr. S. Pembroke. Yes; and therefore we desire to know something about it, because we find *Kensel's* hand in it.

Mr. At. Gen. We can give you a better account of it than you think for; but that will get you into an hour's wrangle more, which is all you have to say for yourselves. We have it, I desire it.

Mr. S. Pembroke. You have it we see, but remember you will give no account where you had it. But then we desire to ask Mr. *Kensel* a question, Whether my Lady Ivy was with him—

Mr. At. Gen. My Lord, we desire we may go on and give our evidence entire; they would gain break in upon us, and take up another hour in quarrelling with our witness. When we hear them in their time office to impeach the validity of the deed, then will be our time to justify it; and I doubt not but we shall give a satisfactory account of it. Pray, will you give an account of the deed you shewed up the last time?

L. C. J. Nay, Sir, Gentlemen, we cannot take up our time in your disputes and idle words. Do not try to hinder them, and we shall for they shall not hinder you when it comes to your turn.

Clerk. This deed hath been read for the Plaintiff and Defendant, and is marked so.

Mr. At. Gen. It has been read well before.

L. C. J. Well, will ye go on, Gentlemen?

Mr. At. Gen. Then we shall shew this deed-poll next.

Clerk. This is also marked to have been read twice. *(Read.)* This is dated 16 Apr. in the 6th year of King Edward the Sixth.

To all whome these words shall come, I *Richard Hill* citizen and mercer of London, first greeting in our Lord God everlasting. Know ye that I, the said *Richard Hill*, for the sum of one hundred and thirty pounds of lawful money of England, by *Thomas Staphin*, alias *Staphin*, of the Parish of *St. Mary* Magdalen alias *Whitechapel*, in the County of *Middlesex*, brewer, unto me the said *Richard Hill* in hand paid, wherewith I content myself to be well and truly satisfied—

L. C. J. Upon whole account is it that my brother *Gregory* causes here?

Mr. S. Stringer. My Lord, Mr. Baron *Gregory* was defamed by the Plaintiff to be here; and as soon as we come to our reply, we shall set him some questions: if he pleads to say, we will disprove him so soon as we can.

Mr. At. Gen. Nay, rather than trouble Mr. Baron to say, we yield he should be examined now.

Mr. Bar. Gregory. I am not in so much haste, my Lord, but I can say a while, and not break in upon the middle of an evidence for me.

L. C. J. If you please, they consent you may be examined, and they may be long.

Mr. Bar. Gregory. I would not interrupt the course of evidence.

L. C. J. Nay, we will take you at your word; but if it be long, pray remember that we shall have ended now, but you will limit yourself out of it; now you are like to shew by it, while, I assure you, brother. Go on.

Clerk read. And do therefore acquit and exonerate the said *Thomas Staphin* alias *Staphin*, his have given, enfeoffed, sold, granted, and by this my present writing confirmed, all those four four-acre and twenty acres and a half of marsh-land, measured by the rod or pole, lying in *Wapping*—

Three acres of which are lying adjoining on the west side of the mill that buttin upon the hilly bank, or way leading to *Radcliffe* Town, called *Radcliffe*-mill, with the bank or wall thereunto belonging, and the well adjoining to the way that goeth up to the *Leys*, called *Schope* well, lying between the East end of the marsh, and all the next next West adjoining to the same, containing by estimation one acre, and the pond and two acres adjoining on the West side, six acres lying in the bottom of the hilly *Leys*, adjoining North west on the wall that reaches from the *Leys* to the Island by the pond. All which eleven acres and a half of marsh-land are in the holding of *Mercator Hall*, miller; and also the bank, or wall-flood or pond, adjoining with on the said eleven acres and a half, containing by estimation of measure two acres; and also all that parcel late divided into two, and now late in the tenure of *Richard Hill*, butcher, containing by estimation of measure six acres, and also all that parcel well adjoining to the six acres, which is the said *Richard Hill* hold in his own hand; and also, that it is to say, all that parcel with the bank or wall

laid and Pond, containing by estimation of measure five acres, which last thirteen acres he bought of, and had conveyed to me and my heirs, from one *John St.*

All which four-acre and twenty acres and a half, more or less, of marsh-land, abuteth on the *Thames* wall, on the part of the South; to the lands of the Dean and Chapter of the Cathedral Church of *St. Paul*, called the *Leys*, on the part of the North; on the aforesaid mill, on the part of the East; and on twenty acres of the said *Thomas Staphin*, on the part of the West. And also all the *Thames* bank or wall, belonging to the said four-acre and twenty acres and a half of marsh-land; which said piece or parcel of wall doth buttin on the fourth end of the said

on part of the east, and on the bank or wall in the occupying of *William Kervet*, on the part of the West. All which marsh-land, bank or wall are in the east end of *Wapping* marsh, abutting on the aforesaid hill and hilly bank aforesaid, in the way leading to the Town of *Radcliffe* aforesaid. And which four-acre and twenty acres are part and parcel of one hundred and thirty acres which

[illegible]

At the Abbey of St. Albans, on the twelfth of April, in the sixth year of the Reign of our Sovereign Lord King *Edw. the Sixth*, by the Grace of God King of *England, France, and Ireland*; between *Thomas Ship* otherwise *Shipley*, of the Parish of *St. Mary Aldelph*, in the County of *Middlesex*, without Alder, beer-brewer, of the one part; and *Mercutio Hall* of *Radley*, miller, of the other part, witnessed. That the said *Thomas Ship* did give and sell unto the said *Mercutio Hall* the sum of money of *England*, to the said *Thomas Shipley*, otherwise *Ship*, by the said *Mercutio Hall* at the enfolding hereof, well and truly paid and satisfied, and of the same doth clearly acquit and discharge the said *Mercutio Hall*, his Executors and Assigns, and every of them, by their persons death or default, granted, bequeathed, and to them licent, and by their persons death or default, to their heirs, assigns, and every of them, and to their heirs, assigns, and every of them, but not to their assigns, and every of them, in the well life of

and the well adjoining to the way that poeth up to the *Lynx*, called *Shashaw*, lying in the east end of the marsh, containing by estimation of measure, three acres and a half, and all the next piece well, adjoining to the same, containing by estimation of measure, six acres and a half; and two acres adjoining on the west side of the six acres, lying on the bottom of the hill *Lynx*, adjoinig up north-west on the wall, which reacheth from the hill *Lynx* to the hill *Wapping*, containing by estimation of measure, and half, little more or less, fourth of an acre; and the wall on the party of the fourth, to the Dean and Chapter of the Cathedral Church of St. Paul, called the *Lynx*, on the party of the north, and on the wall by the pond on the party of the well; and also all the Twauns well belonging to the laid eleven acres and a half of meadow or marsh-land, which said piece or parcel of bank or wall, doth abate on the fourth end of the afore said hill *Lynx*, or way reaching to the east side of it, which leadeh to *Randell* Towne on the party of the east, and on the wall in the occupation of the *Wapping* Towne, on the party of the well; and also the wall and field down to the low-water mark of the River *Thames* belonging to the premises, all which _____ as the east end of *Wapping* marsh, abutting on the afore said hill, and the hill *Wapping*, or way leading as afore said in the Parish and Manoe of *Stebenthroft*, otherwise *Sutton*, in the County of *Middlesex*, and now in the holding of the said *Margaretta Hall*, to have and to hold all the said parcels of marsh-land, fore-land and foll, and every part and parcel thereof, to the said *Margaretta Hall*, his heirs and assigns forever, the first day of January in the year of our said Sovereign, before the date herein to the end and term of one hundred and twenty years, being the date herein, yielding _____

L. C. J. Very well, and how came the error there?
Baylor. This is the very deed I looked upon at that time.
L. C. J. Where did you first get that deed?
Baylor. I was at the finding of it in a garret at Mrs. Karsle's house.
L. C. J. That was in Sept. 1882; you say.
Baylor. Yes, in Sept. 1882. I never saw it before.
L. C. J. Pray, who are parties to that deed?
Myself. My Lord, it is the purchase of the Inheritance.
L. C. J. It is for; and how should that come to be in the possession of another?
Baylor. I never saw it before that time.
L. C. J. Read it again.
Lark reads:—This is dated the 6th of April, in the sixth year of Edward the Sixth. To all faithful—
Adm. Sol Giv. Certainly, my Lord he is under a mistake.
L. C. J. Ay, so he is sure enough, but a very bad one upon my word. I wonder how far we can bring him out of it. Mr. Baylor, let me ask you a question.

Mr. Williams. Was your name ever in it, or not?

Kens. No, never.

Mr. Davies. But it was to it at the trial in *Mohamud's* turn.

L. C. J. Did you let your name to all the deeds you found in the garret?

Kens. Yes, I did.

L. C. J. Upon your Oath, *Bensley*, did you let your name to any deeds that he did not, that were found there?

Bensley. I believe I might do so, I would not fear punctually to it.

L. C. J. Was he with you?

Bensley. He was with me in the very first chamber.

Kens. I do not know that ever I put my hand to that deed in my life.

L. C. J. Did you ever see that deed?

Kens. I cannot say I did; I remember nothing of it.

L. C. J. I ask you once again, when you found this deed, was he with you?

Bensley. Yes, Sir.

L. C. J. Yes, *Kensley*, did you ever tell him to look and search any deeds in your garret, but when you were by yourself?

Kens. No, my Lord.

L. C. J. Then I would ask you upon your oath, because you are the person that had these deeds in your custody, was there any deeds delivered out of your hand that you did not set your hand to?

Kens. I believe there was never an one.

L. C. J. How came this deed, which he found was found there, not to have your hand to it?—*Kensley*. I do not know that ever I saw it.

Mr. At. Gen. Did Mr. *Kensley* say he was looking for deeds of his own concern, when he found the first deed?

Bensley. He did say he had looked before, and had found some of these deeds, and then mislaid them, and desired my assistance to find them again.

L. C. J. Why did he say to you at first?

Bensley. He said he had been spoken unto by my Lady *Ivy*, to look for deeds that might concern her ancestors, and he had found some; but finding some also that concerned himself, he had mislaid my Lady's, and desired me to help him to find them again.

L. C. J. What employment have you under my Lady *Ivy*?

Bensley. I am her rent-gatherer.

L. C. J. Her husband, I suppose? But now you speak of what my Lady *Ivy* desired of *Kensley*, I would ask you a question, lest it slip out of any memory, Were you present at any time when my Lady *Ivy* spoke to Mr. *Kensley* to look after any deeds?—*Bensley*. Yes, I was.

L. C. J. Pray tell us whose deeds he desired him to look?

Bensley. The deeds he said he had mislaid.

L. C. J. What were they?—*Bensley*. The deed of *Richard III.*, and the deeds belonging to *Stephen* and *Shadrach*.

L. C. J. With all names did he mention to him, that the wife would have looked after?—*Bensley*. She did mention him.

L. C. J. Upon your oath, did he mention any deeds made by Dr. *Drom*, Dean of St. Paul's?—*Bensley*. No.

L. C. J. By one *May*, Dean of St. Paul's?—*Bensley*. No.

L. C. J. Was one *Law* named?—*Bensley*. No.

L. C. J. Or one *Helder*?—*Bensley*. Not that I know of.

L. C. J. Did he mention one *Jane Hall*?

Bensley. I do not know that my Lady *Ivy* gave particular order for any of these names.

L. C. J. Did he, upon your oath, name *Mervin Hall* to you?

Bensley. No, my Lord.

L. C. J. Upon your oath, *Kensley*, was not he by when my Lady named *Mervin Hall* to you?—*Kensley*. He was, my Lord.

Bensley. I did not hear my Lady name that name at all.

L. C. J. No; he heard her give order for no particular deeds, neither for *Helder*, nor *Law*, nor *Mervin Hall*, but only concerning *Stephen* and *Shadrach*.

Sir *Edw. Herbert*. *Bensley*, did he say he had before found them, and mislaid them?—*Bensley*. Yes.

Mr. At. Gen. Upon your oath, what deed do you take that to be which is produced?

Mr. Penn. Can you read it, yes, or no?

L. C. J. Mr. Penn. do you think my Lady *Ivy* sent *Bensley* to look after deeds that he could not read? or was very greedy?

Mr. At. Gen. What deed do you take it to be?

Mr. Sir. Gen. Let me ask you one question, Mr. *Bensley*? Did you ever let your hand to any deeds that were not found at Mr. *Kensley's*?

Bensley. Yes, have.

Mr. Lenthall. Upon what occasion did you put your hand to them?

Bensley. Because they were ancient deeds, and I was to look out where the hands were that they did concern.

Mr. At. Gen. Pray now answer my question; I look upon it, and tell me what deed do you take it to be?—*Bensley*. It is a deed of sale to *Stephen*.

L. C. J. It is, for you are in the right of it; and now upon your oath, where did you find that deed of sale?

Bensley. My hand is to it, and this is one of the deeds, I take it to be so, that was found in the garret at Mr. *Kensley's* house.

L. C. J. He has said for I know not how often.

Mr. At. Gen. He is not honest.

L. C. J. How can I help that, Mr. Attorney? But what he says, is plain.

Mr. Sir. Gen. Pray read over the note you have in your hand to yourself, and remember all the deeds that are particularly therein contained.

L. C. J. Let him read his note, (which is dead) and now ask him what you will.

Mr. At. Gen. Is there any deed of the 16th of April, 6 Edw. VI. from *Hill* to *Stephen*, in that note?

L. C. J. That is no fair question, Mr. Attorney.

Mr. At. Gen. With your leave, my Lord, I conceive it is; for that will make a plea that he is mistaken.

L. C. J. I believe he is; but with your favour, it is not a fair question; you see only to ask him, whether that deed given in evidence be there?

Mr. Sir. Gen. I would ask him one short question, my Lord, and I think it is a fair one.

L. C. J. Ay, in God's name, ask what fair question you will, but no leading ones.

Mr. Sir. Gen. Your witness is sworn, Madam.—(To my Lord, &c.)
Mr. S. Lenthall. My Lord—was not underlaid what he says, that is plain.

L. C. J. Further, all knowers are fools in one kind too.

Mr. Sir. Gen. Have you read the date of that deed?—*Bensley*. Yes.

Mr. At. Gen. My Lord, if you please, we will go on with our other evidence a while, and let him recollect himself, and recollect of us.

L. C. J. With all my heart; but I think the more he considers, the worse he is, and so he will be to the end of the chapter.

Mr. At. Gen. They have called to us, my Lords, for an account of this deed, we shall now prove that Mr. *Noak* knew of this deed before.

Swear Mr. Butler. (If he will do so.)

L. C. J. What is your name?—*Butler*. *William Butler*.

Mr. At. Gen. Pray, will you tell the Court and the Jury, what difference you had with Mr. *Noak*, and what he said about a deed, and when?

Butler. I never saw the leaf, but as I was here at the last trial, when there was a verdict for this Estate to be my Lady *Ivy's*, and afterwards,

the 22d of December last, I had an opportunity of being with Mr. *Noak*, he being with Mr. *Bryson*, my Lady's husband, since dead, at the *King's Head* tavern, with whom I had some business.

Mr. *Bryson* was there then, (I suppose it was by appointment they met) and in half an hour Mr. *Noak* came up stairs. After they had chatted some three complements, they came to talk about meeting at Mr. Attorney-General's chambers in the Temple, to treat about their controversy.

Says Mr. *Noak*, let there be a consultation upon it of go, as he said by him that falls. Mr. *Bryson*, Mr. *Bryson*, I will make no lecture, but I will certainly meet there.

Says Mr. *Noak* again; And I question not but to give such satisfaction, as whereby to converse you and my Lady, that this is not her Estate. I should be glad to hear that, says Mr. *Bryson*; why I hope you do not think the deeds not forged? No, says Mr. *Noak*, I do not think they are forged.

Mr. *Kensley* offered me a long time ago, to show me that deed, and I might have had it in my possession; but I would not; for if I had, I should have been the worst man in the world to have it. This is all I can say.

L. C. J. And what is this to the purpose, Gentlemen? Alack—a day, this is very thing, a slight discourse in a tavern. How can any answer be given to such an evidence? That indeed it does not need any. Pray let not our time be taken up with such trifling stories of a cock and a bull, go on to that which is material.

Mr. At. Gen. Now we shall produce a leaf from *Mervin Hall* to one *Reper*, of part of this eleven acres and an half.

Clark reads. This indenture made the 13th day of November, in the 22d and 23d years of the reign of our sovereign Lord and Lady *Philip* and *Mary*, by the Grace of God King and Queen of England, Spain, France, both the Indies, Territories, and Islands; Defenders of the Faith, Arch-Bishops of *Angora*, Dukes of *Burgundy*, *Millen*, and *Brabant*; Counts of *Hainault*, *Flanders* and *Tire*; between *Mervin Hall* of *London*, miller, of the one party, and *Richard Reper*, citizen and father of *Reveries*, of the other party, witnesses, That the said *Mervin Hall*, for the sum of six pounds of good and lawful money of *England*, to him by the said *Richard Reper* in hand paid; whereof the said *Mervin Hall* clearly acquittance and discharge the said *Richard Reper*, his executors and assigns, and every of them, by their present, hath granted, sold, aliened, and to turn lease, and by their present grant, aliened, and to turn lease, to the said *Richard Reper*, a parcel of marsh-ground, lying and being in *Wapping* marsh, at the east end of the marsh, beginning at the well side of the well, which lieth by the way that leadeth up to the *Lydney*, called *Shadrach*, measured by a straight line from the *Lydney*, by the well side of the well, to the *Thomas* wall, and reacheth well to the way that leadeth up into *Wapping* high-way, containing by estimation of measure seven acres, little more or less, and the pond; all which marsh-land abuteth north upon the *Lydney* of the Dean and Chapter of the Cathedral Church of St. Paul, and south upon the *Thomas* wall; and also the *Thomas* wall belonging to the seven acres, with the forland and foil, down to the low-water mark of the River of *Thames*; all which marsh-land are lying in the parish and manor of *St. Andrew*, alias *Stepney*, in the County of *Middlesex*; to have and to hold the said parcel of marsh-ground, wall, forland and foil, with the appurtenances, to the said *Richard Reper*, his executors and assigns, from the feast of the Annunciation of our blessed Lady St. Mary the Virgin, next coming, unto the end and term of four-and-twenty years from thence next ensuing, and fully to be completed and ended; yielding and paying therefor yearly, during the said term, to the said *Mervin Hall*, his executors and assigns, three pounds of good and lawful money of *England*, at four terms of the year—

L. C. J. What date is that deed of?—*Clark*. The 13th of November, in the 22d and 23d years of King *Philip* and Queen *Mary*.

Mr. At. Gen. Now we shall read *Stephen's* license to *Hall*, to alien his term.

Clark reads. To all manner of people to whom this pre-sent writing shall come, I *Thomas Stephen*, alias *Sorbin* of the parish of *St. Andrew*, alias *Stepney*, in the County of *Middlesex*, brewer, send greeting in our Lord God everlasting.

Whereas I the said *Thomas Stephen* on the 25th of April, in the sixth year of Edward the Sixth, have taken eleven acres and a half of marsh-land

with all the bank with the forland and foil, down to the low-water mark of the River of *Thames*

that he should not alien or assign the said lease or term of years, without the special licence or consent

Now know ye, That I the said *Thomas Stephen*, for diverse good causes

give leave and licence to the said *Mervin Hall*, to the right worshipful Mr. Dean of the Cathedral Church of St. Paul

with the wall, forland and foil under such conditions, as is rehearsed and contained.

Mr. Williams. I would ask Mr. *Bensley* something about this deed; look upon it, Sir.

Mr. At. Gen. We have not done with him yet. Pray take that deed out of his hand.

Mr. Sir. *Pomfret*. You will let him give some account of it first, Mr. Attorney.

Mr. At. Gen. You would fain confound him.

Mr. Sir. *Pomfret*. He is confounded enough already.

Mr. *Sol. Gen.* Now, Mr. *Banjo*, I have considered it, pray once more look upon the deed again—(which he did).—Was that deed one that you signed then or no?

Banjo. This is my name, but I cannot find the date of this deed in my paper. I cannot tell now whether it be one I found then or no.

Mr. *Sol. Gen.* Did you set your hand to any deeds that were found there, which you did not find down in your paper?

Banjo. No, not that I know of, I do not know I did.

L. C. J. Pray where did you find the deed that you found?

Banjo. I set my hand to the deeds that were found there at the house.

L. C. J. Did you set your hand to some else but what were found there?

Banjo. I have set my hand to divers deeds besides, but they are none of those deeds that are in my paper.

L. C. J. Where did you set your hand to any deeds besides?

Banjo. To divers deeds I have set my hand at home.

L. C. J. Have you to any relating to the lands in question?

Banjo. I do not know that I have set my hand to any deeds relating to the lands in question, but at Mr. *Kensel's*.

L. C. J. To what purpose did you set your hand and name to the deeds you found at *Kensel's*?

Banjo. To the same intent to testify that I was at the finding of them.

L. C. J. To what end did you set your hand to any other deeds?

Banjo. To the intent that I know better where the lands did lie than the deed, and when my Lady found any deeds, I set my hand to them, and then found the places where the lands lay.

L. C. J. You had had a fair time to consider of that deed, could you see there to what place that deed related, by this mark?

Banjo. I cannot find the date of the deed in my paper.

L. C. J. But where do you think you did put your name to that deed?

Banjo. I cannot tell whether I did it at that time or no, but this is my name.

L. C. J. I know thy name is thus, man, I read it two hours ago: but did you put your hand to that as one of the deeds that you found in September, 1683, when you were at Mr. *Kensel's*, or not?—*Banjo*. I cannot tell.

L. C. J. Dost thou believe thou didst not?—*Banjo*. I cannot tell.

L. C. J. Canst thou tell the reason why thou didst set thy hand to it?

Banjo. Certainly because I was at the finding of it, I know so otherwise.

Mr. *S. Pender*. Now pray look upon this deed (showing him another) and see whether that be thy name or not?

Banjo. Yes, my Lord, I will.

Mr. *S. Pender*. Is that your name?

Banjo. Yes, it is; this is one of the deeds that was found at Mr. *Kensel's*.

Mr. *S. Pender*. You told us as to the other two.

Mr. *S. Pender*. But he was not positive in it.

Banjo. This is rat-eaten, and so I know it again; and there is a rat-eaten deed set down in my paper.

L. C. J. Let him be as positive as he will, he has been fourteen five times.

Mr. *Sol. Gen.* He was confounded with a mistake of the deeds, he having set his hand to so many.

L. C. J. They are perjured both of them plainly; that is the truth of the matter.

Mr. *Sol. Gen.* I hope the folly of our witnesses in such circumstances, shall not rob us of our own land, and that it appears to be plainly.

L. C. J. God forbid but you should have your own land; but by the Grace of God, if I can help it, you shall never have a foot of land by foreclosing and perjury.

Mr. *Williams*. When did you find that deed?

Banjo. The 13th of September.

Mr. *Williams*. Where?—*Banjo*. In the garret at Mr. *Kensel's*.

Mr. *Williams*. Are you sure of it?

Banjo. Yes, I am sure of that deed, because it is rat-eaten.

Mr. *Williams*. *Kensel*, pray, do you look upon it, what day you to that deed?

Kensel. This is my hand, and this is one of the deeds that was found there at that time.

Mr. *Williams*. Pray read the date of that there.

Kensel reads. This Indenture, made the 13th day of November, in the 3d and 34 years of Philip and Mary—

S. Pender. This is a deed from *Maria Hall* to *Raper*; how should that come to be at *Kensel's*?

L. C. J. They have taken it.

Mr. *Sol. Gen.* They go about to blench our deeds by the folly of our witnesses, which we cannot help. We however leave the deeds to the jury, and let them see if these facts and other things look like counterfeit.

L. C. J. Well, so on, the jury will have the deeds with them.

Mr. *Sol. Gen.* My Lord, we did before produce a conveyance from *Richard Hill* to *Staph*. It recited not these, that conveyance had no legal execution; it was then made, and a fine and recovery by the heir of *Hill*, and what was the occasion of this, will appear by the deed.

Kensel reads. This Indenture made the 12th day of November, in the 5th and 36 years of the Reigns of our Sovereign Lord and Lady, Philip and Mary, by the Grace of God King and Queen of England, Spain, France, both the Sicilies, Jerusalem, and Ireland, Defenders of the Faith; Archbishops of Dublin, Dukes of Burgundy, Milan and Brabant; Counts of Hainault, Flanders and Toul; between *John Hill*, son and heir of *Richard Hill*, late Citizen and Merchant of London, of the one party; and *Maria Hill*, late wife and executrix of the last will and testament of *Thomas Hill*, and *John Hill*, son and heir apparent of *Thomas Hill*, of the other party, witnesses, That whereas the said *Richard Hill*, father of the said *John Hill*, by the said *Maria Hill*, amounting in the whole to the sum of 1000*l*.

And where variance concerning all that parcel of marsh-land unto Sir *Katharine's*, which the said *Richard Hill* bought of *Cornelius Fanderdy* for the assuring all that *Wapping*-marsh, the said *Richard Hill* stands bound in

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an obligation of which condition, that he should make by a certain day, a good, true, sufficient, indelible of and in all those parcels of marsh-land, lying in *Wapping*-marsh; that is to say, all that

with six acres of marsh, now in the tenure or occupation of one *Kensel*, or his assigns, and all those lying in the East

and in the tenure of one *Staph*; that is to say, all the bank, containing by estimation three acres and an half, and all those next adjoining

by measure five acres or more and two acres by estimation of measure lying in the bottom of the *Lyons*, and reaching from the *Lyons* to the Island by the pond; and also that parcel divided into two

with six acres; and also that

holds in his own hands; that is to say, all that parcel with

the island and pond, containing by estimation of measure, five acres

and of, and in all those parcels lying on the west side of the pond, containing in the whole sixteen acres by measure, all which

said sixteen acres to *General*, the said *Richard Hill* had in his own occupation reaching to the

some, sometime plowed and sown by one *Richard Clayton*, and now in the occupation of one *Casper*, butcher, and lying on the east side of *General* towards *London* fields, which was conveyed to him from one *Richard Tjerry*, and also all that marsh in the tenure of one *Clayton*, butcher,

one *William Crow*, butcher, fourteen acres and of *Edward* 4*l*, four acres; and also all the lands, meadows, reeds, heath, ponds, fishing, mills, and the low-water-mark of the River

Thames, and all trees For the appraising all valuations and suits, the said parties to this Indenture have fully

condemned and agreed in form following; that is to say, The said *John Hill*, for the sum of 1200*l*. of lawful money of England, in which he acknowledged himself to be truly indebted to the said *Maria Hill* and *John Hill*, and

the said *Maria Hill* and *John Hill*, for the sum of 1200*l*. of lawful money of England, in which they acknowledged themselves to be truly indebted to the said *John Hill* and *John Hill*, and

with all manner of lands, meadows, reeds, heath, ponds, fishing, mills, and the low-water-mark

with the appurtenances thereof, lying and being in

without or otherwise within the parishes their heirs and assigns for ever, all the right, title, together with all evidences and writings discharged

of all former charges, incumbrances by the said *John Hill*.

Mr. *Sol. Gen.* Next we shall find that *Maria Hill*, that had this long lease, and had demised the seven acres down from *Shadwell* to *Raper*, doth on the 12th of November, in the 5th and 36 years of Philip and Mary, surrender the remaining four acres to *Thomas Staph*, and then we shall find it was demised to *Fer*, who was the full builder and male

Fer's lease.

Mr. *Sol. Gen.* Your Lordship doth observe, that the licence was to assign the whole eleven acres and an half; but he did assign but seven.

Kensel reads. This is dated on the 12th of November, in the 5th and 36 years of King Philip and Queen Mary.

To all whom this present writing shall come, I *Maria Hill* of *Ratcliffe*, miller, greet greeting in our Lord God everlasting. Whereas *Thomas Staph* by his Indenture, dated the 20th day of April, in the 6th year of King Edward VI. let to me the said *Maria Hill* on the one side

with the *Thames* wall therein belonging, with the forland and soil for one hundred and twenty and eight

years: know ye that I the said *Maria Hill*, for the sum of 30*l*. of good and lawful money of England in hand paid have

by his precious natural, created, and absolutely confirmed, to the said *John Staph*, his heirs, executors and assigns, all such estate, right, title, interest, term of years, estate, property, claim and demand, which I, or any person to my use, have, or ought to have, or at any time shall

to have, or to, or four acres of marsh-land, abutting on the green bank, at my house, and for six years, to be paid by the said *John Staph*, yearly, to the well side of the lands in the occupying of *Raper*, which said lands was made over with the leave and licence of the said *Thomas Staph*, to the right worshipful

for the term of twenty-three years; and with on the field, in the occupying of *John* north on the *Lyons*, and south of it, or to the *Thames* wall abutting on the south-west wall, as afore-

said down to the low-water-mark of the River of *Thames* So that neither I, my executors or

assigns, any right, claim, demand but from all

or any part thereof shall be utterly excluded and departed for ever—

Mr. *Sol. Gen.* Here is a fine levied, *Quod Vin* 3 *Eia*, they had both

also where that was found too? Is not that forged?

[The Fine was read.]

Mr. *Sol. Gen.* Here is a recovery also, and a deed to lead the *Utes*: In which recovery the names *John Hill*, who voucheth over the common voucher.

[The Recovery was read.]

L. C. J. Read your deed to lead the *Utes*.

Kensel reads. This Indenture made the 12th day of May, in the fourth year of the reign of our Sovereign Lady Elizabeth, by the Grace of God, Queen of England, France, and Ireland, Defender of the Faith, &c. between *Maria Hill* and *John Hill*, of the one party, and *Edward Staph*, of the other party, witnesses, That whereas the said *Richard Hill*, father of the said *John Hill*, by the said *Maria Hill*, amounting in the whole to the sum of 1000*l*.

Where it was concluded, fully conveyed and agreed between the parties to this Indenture, that they the said *Richard Hill* and *John Hill* should in the term of the *May Term* recover to them

by writ of *Entry* for *Disseisin* in *de Pate*, to be had against the said *Maria Hill* and *John Hill*, in the Queen's Majesty's Justice of the Common-Pleas at *Westminster*, for that time, being according to the use of former recoveries

one hundred acres of fresh marsh, within the parishes, manors, fields

And it was fully agreed between the said parties, that the said recovery should be to the said

Mr. *Williams*. Mr. *Banjo*, pray, Sir, look upon this deed, and see whether your name be to that deed or no? (Showing him the *Bar* order of Hall.)

Banjo. This is my name.

Mr. *Sol. Gen.* Was Mr. *Kensel's* hand to that deed?

Banjo. I cannot tell.

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Mr.

L. C. J. Rule *Flow upon Grenade's flood*; therefore this mill he your land: that is all the argument I can make of it. Your boundaries do make it as plain as the nose in a man's face.

Mr. At. Gen. Swear Mr. Hailwell. [What was done.]—How long have you known this place, the lands in question?—*Hil.* Not above a year.

L. C. J. He is your Surveyor, I think.

Mr. At. Gen. He is his, my Lord. Pray, you *Cape*, which way did the water go?—*Cape.* Westward.

L. C. J. But which way did you see it go to the river from the *Lyons's*? *Cape.* We sometimes went the lower way, and sometimes the higher way.

L. C. J. Which was the higher way?—*Cape.* *Remington's* way.

L. C. J. And which was the lower way? *Cape.* Through *Wapping* and *Shobell's*. *Shobell's* is the lower way.

L. C. J. Thou take 1/4 of the north-west way; but if you went in go directly into north to south, which way would you have gone?

Cape. Down *Cock-hill*, or down *Brass-bridge*.

L. C. J. Where is that?—*Cape.* Beyond *Cock-hill*.

L. C. J. Whereabouts is it?—*Cape.* Within a little of *Fox's* lane.

L. C. J. When you went down *Cock-hill*, upon which hand did you leave the mill?

Cape. If I went the lower way, I left the mill on the left-hand.

L. C. J. But when you went the higher way down *Cock-hill*? *Cape.* Then we left the mill behind us.

L. C. J. What dost thou mean by behind thee?—*Cape.* I left it particularly.

Mr. At. Gen. Yes, my Lord, he is right.

L. C. J. But I say he is not right, Mr. Attorney, for *Cock-hill* is north of the mill.

Mr. At. Gen. *Cape*, do you know *Fox's* lane?—*Cape.* Yes, very well.

L. C. J. Is it raised?—*Cape.* Yes, right or near foot.

Mr. At. Gen. What was the reason of its being raised? *Cape.* It was not fitting for carts to go over.

L. C. J. Why to?—*Cape.* The Water came upon it.

Mr. At. Gen. And then to come to the amendment, taking in the place in question, it makes just 130 acres, which is our number, and no more.

L. C. J. Then you will leave the Dean nothing.

Mr. At. Gen. Yes, he has about 40 years.

L. C. J. Where?

Mr. At. Gen. In the east, beyond this place.

L. C. J. Why, would you have any of the land that belongs to the mill?

Mr. At. Gen. We claim this as marsh-land; which they have nothing to do with, and the number of acres will not be altered without it. *Mr. Hailwell*, have you advertised the marsh?—*Mr. Hail.* Yes; I have, Sir.

Mr. At. Gen. From whence did you begin?—*Hil.* From *Howe's* gate-Ditch.

Mr. At. Gen. Within what bounds?

Hil. That which they call the *Lyons's* and the marsh to St. Katherine's from the well.

Mr. At. Gen. And how much does it make?

Hil. Besides the well and the *Lyons's*, I find it something above 130 acres.

L. C. J. Something above, how much?—*Hil.* Not an acre above.

Mr. Hail. Pray, Sir, how many acres lies out of *Grenade's* land.

Hil. Besides the well and the *Lyons's*, I can make but fifty acres and an half.

L. C. J. Where did you reckon up the whole?

Mr. At. Gen. To make up the 130 acres he took in the mill and all.

L. C. J. That is very well.

Mr. At. Gen. Why, my Lord, it is no more than 130 acres, and so much we must have.

L. C. J. Look into the survey that you produced, and see what that says.

Mr. At. Gen. Besides all—

Mr. At. Gen. Those lie eastward of the mill.

L. C. J. Pray, did you measure the well?

Hil. Wapping well is 20 acres.

Mr. At. Gen. If they will consent, the Jury shall have the survey with them.

Mr. Hail. With all our hearts, let them have it.

L. C. J. Gentlemen, both sides consent, you shall have the survey with you; but without that consent you could not have had it, it is so being under seal.

Mr. At. Gen. Then we defer our last verdict may be read.

Mr. At. Gen. It was a verdict upon full evidence?—*Yes*, Sir.

Mr. At. Gen. How many hours did it last?—*Answer.* Five or Six.

Mr. At. Gen. Was there a view in it?—*Answer.* There was so.

L. C. J. Read it.—[What was done.]—*Mr. Hailwell*, how much, pray, is the land between *Fox's* lane and the mill?

Hil. Below the *Lyons's* I find it to be seven acres and an half.

L. C. J. Can you expost that all that little word of garden, orchard, &c. should be answered under seven acres and an half? Besides, the full and ancient reversion of rent was 20 s. a year; after it, was increased to 10 s. a year, and it doth appear the mill turned 10 s. 10 d. a year, that it was pulled down, and so the land was to answer the rent; which, for a ground-rent upon a Church-lease, in those days, was very great. Have you done now?

Mr. At. Gen. We have done for the present, my Lord.

L. C. J. What say you to it then for the Plaintiff, Gentlemen?

Mr. S. Stringer. May it please your Lordship, and your Gentlemen of the Jury; if we should give no further evidence at all than what we have already given, but leave it upon this, I dare affirm it plainly appears that they have no title at all to this land. As to their last piece of evidence I would still give an answer to that, and that is their verdict; and that which I would observe upon it, and say to it, is this; it was a verdict obtained upon forged Deeds: Deeds found, as is proved, and as you have heard from their two special witnesses, in a very extraordinary manner, found in a gutter. But by what act procured, and that they are forged, I question not but we shall give you satisfaction. But besides, as to their advertisement, it seems if they would have 20 s. a year in the question about the extent of the marsh. So much they claim; and we shall bring two Surveyors that will give you an account upon their oaths, that between *Fox's* Lane, which we lay in the well boundary of our land, and the call of theirs,

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and *Howe's* gate-Ditch, where the marsh ends, there is above 130 acres; and so they do not want their number. For all the evidence that they have given out of Records, we agree them to be as they say; and by that agreement shall do ourselves no harm at all, for they all do confirm our assertion. They place the eastern bound of the marsh at *Remington's* way, now of *Fox's* lane from *Rat's* gatehouse begin. The art has been to confound the Clerk by passing his name, when it is a plan, apparent mistake they run upon; and indeed I may very well say, a wilful one too. They would have us confine all to a mill and a little ditch, when there are in all five acres always enjoyed with it, and all called the mill, which had a pond, gardens, orchards, tenements, &c. And now there are very large drains necessarily made, to keep the water from annoying the inhabitants, and so carry it away. But for a further evidence of our title, we shall still prove, that upon an bill exhibited in the *Exchequer* by Mr. Attorney General, against *Stephen* their ancestor, to know what acknowledgments had been made, what before us to the Dean of *Pew's*, and what to Mr. *Stephen*, are fully set out.

There it is proved, that the bounds of the marsh were *Ray's* mill, since *Fox's* lane. The marsh was continually overflowed with water; but now in our ground there was a great many ditches and places to keep the water for the service of the mill. When we came to build upon our ground, which was 25 *Tenches*, [then it began] then he brought an action, and did pretend that we did encroach the wall (foretold) into the marsh, there we had a verdict upon a view, and after a 100-foot upon full evidence. There was likewise a Bill exhibited in Chancery against *Stephen* the father; wherein the bounds are set forth, and he in his answer particularly enumerated the boundaries. And it has been constantly the reputation of the place, that this was the Dean's lands, foretold by the Dean's lands, told in the last times of usurpation as the Dean's lands.

The first thing, my Lord, which they produced, and that we did then, and do now controvert, is *Carver's* lease. This, they say, was found in the gutter; and they bring two witnesses for it: But how they have behaved themselves! What confusion there is in their evidence! You for—

L. C. J. Brother *Stringer*, if you have any evidence to give, pray give that first, and leave your remarks till the last; you shall then say what you will; but first give your evidence.

Mr. S. Stringer. My Lord, we shall pursue your direction: We say upon *Fox's* building, *Stephen* claiming that the wall belonged to him, comes and brings an action of ejectment against *Fox's* tenants for this wall, and upon trial the verdict went against him. Then there was another action brought, and he was non-suited upon that. Afterwards, there was a bill preferred against him, and in his answer he confessed that this wall-marsh belonged upon *Fox's* lane. Here are the Bill and Answer.

[Which were read]

As likewise Copies of two Records, one in the Common-Pleas; the other in the King's Bench.

Bill. 22 Jacobus. Ejectment; George Bawell, Plaintiff, against Thomas Fox, Defendant. Not paid, placed a wall for the Defendant.

Mich. 14 Jacobus. Ejectment; William Torrell, Plaintiff, against Thomas Fox. Not paid, placed, and the Plaintiff became Nephew.

Sir John Trevor. My Lord, we have this further piece of evidence; we have here a lease made by *Stephen*, of seven acres of lands, with a wall of *Fox's* lane, which divides the marsh from the mill-ditch, and there is a covenant, that if he recover any part of the wall, marsh-wall, the tenant shall have the advantage of it, and increase his rent.

[Which I took leaving date, 16 Aug. 13 Jac. Anno Dom. 1613.]

Mr. Hailwell. This was in time between the non-suit and the verdict.

Mr. S. Stringer. My Lord, as I did open it, there was an information exhibited by Mr. Attorney General, 10 July 7 C. 1. against our tenants and theirs, and upon that information there were examinations of witnesses, and all the bounds of both parties particularly set out; which make it all as plain and clear as can be. This cannot be set up to prove a ten; it was in 7 C. 1. so long ago; and when that shows the wall to be the inheritance of the Dean of *Pew's*, it answers all their pretence of a lease.

L. C. J. Look you, Brother, that cannot be given in evidence, and I will tell you why; if it were an information against *Stephen* himself, he being the party under whom they claim, no doubt it were evidence; but it is against the tenant of the one, and the tenant of the other, who only could support their own tenancies, but they could not know their landlords particular titles, and then this cannot be evidence to bind their inheritance.

Mr. S. Stringer. We submit it to you, my Lord. Then we shall offer you a survey. In the year 1649, this was expected to be at Church-lands, and a survey taken, and found to be the inheritance of the Church of *Pew's*; and in fact sold for good, and enjoyed by the Purchasers till the Revolution.

Mr. Hailwell. Yes, and to that very person told from whom they say they had their lease, which they have produced: That is, to *Winterton's*, whose Executor *Kearle* was, as he says; and if he had given a lease, which then had been forty years in being, would he have given so much money, or ventured to purchase it as the inheritance of the Church?

Mr. S. Stringer. Here is the survey then taken.

Mr. At. Gen. We oppose the reading of your survey, because it had not any authority to warrant it.

L. C. J. Nay, Mr. Attorney, tho' there was no sufficient authority, yet for things have always been allowed in evidence. You cannot but remember it was done in the case of *Highgate-Road*, when they call it, *Winterton's* Road.

Mr. At. Gen. Then let them read the commission it was made upon.

Mr. S. Pemberton. We have none; there were many things done then of this nature, without commission under seal.

L. C. J. Ay, they did them by orders from Committees. Read it, [it was read, dated Dec. An. 1649.]

Mr. S. Stringer. Now we will show the deeds of purchase, which was by deed enrolled.

Dated 23 Nov. An. 1660. for 9500 l.

Mr. S. Stringer. My Lord, because they pretend this to be an over-shot-mill, as they call it; though it is plain it could not be by the place, yet we have three tide-mills that we would trouble you with a little: but first here are some others, *Blind*, *Merr*, and *Leyburn*, who

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who will give an Account of it—(They were *James*).—*Blind*, Do you know the Houses in question?—*Blind*, Yes.

Mr. Williams, How long have you known them?

Blind, Thirty Years.

Mr. S. Pender, Pray, what is the common Reputation whole the Lands were?—*Blind*, It was always taken to be the Dean's Lands.

Mr. Williams, Who were the Tenants?

Blind, *Mr. Whitcomb* and *Mr. Whitcomb*.

L. C. J. Prithor, could thou tell what was taken to be the East Boundary of *Whittington's*?—*Blind*, *Far's Lane*.

L. C. J. Was that the Reputation, upon your Oath, in all your Time?

Blind, Yes, ever since I knew it.

Mr. Williams, *Blind*, Pray, do you know the Pond?

Blind, The Ponds were filled up; but there were Ditches in my Time.

L. C. J. How near were the Ditches to *Far's Lane*?

Blind, Within ten Feet.

Mr. Williams, What was the use of those Ditches?

Blind, The Water came in at *Ball-shay*, and filled up the Ditches with the Tide, and it went back again.

Mr. S. Pender, Can you tell who purchased these Lands of the State in the late Times?—*Blind*, *Whitcomb* and *Whitcomb*.

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L. C. J. How near were the Ditches to *Far's Lane*?

Blind, Within ten Feet.

Mr. Williams, What was the use of those Ditches?

Blind, The Water came in at *Ball-shay*, and filled up the Ditches with the Tide, and it went back again.

Mr. S. Pender, Can you tell who purchased these Lands of the State in the late Times?—*Blind*, *Whitcomb* and *Whitcomb*.

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Mr. Williams, And this, he says, lay West of *Far's Lane*; and there is your *Shed* Bounds for you!

Mr. At. Gen., I ask you again, that Spring which you mentioned, did it lie in the Dean and Chapter's *Lydney*, or no?—*Carleton*, I told you I know not where the Ground was; the Church Bounds were near.

Mr. S. Lusk, Did it lie in *Upper Shadwell*?

L. C. J. He answers as plain as any Man can, it was where the Church now is.

Mr. Williams, Where is *Kemp*? Do you know the Houses in question?

Kemp, The Houses in *Shadwell* I do know, between *Ball-shay* and *Far's Lane*; I knew them before they were built as they are now; there were some small Houses built here and there all along. There was a Pond and Datchet to receive the Water of the Tide; but at *Ball-shay* especially, these were Houses along to the northward; among the rest, *Mr. Croome's House*, who had a large Orchard and Garden.

L. C. J. Where was that?

Kemp, Eastward of *Far's Lane*, and several other Houses there were.

Mr. Williams, Whole Inheritance was it?

Kemp, *Mr. Moore* was my Master's Landlord, and *Shadwell* was requested by Lord and Gravel.

Mr. Williams, She was *Let* under the Church.

Mr. S. Pender, Did you know the Cens and Ditches in that Ground?

Kemp, Yes, Sir.

Mr. S. Pender, How far went they *William*?

Kemp, The Ditch ran all in one till it came to *Ball-shay*, where it parted in the Northward and the Willward.

L. C. J. How near *Far's Lane*?

Kemp, Within a Dozen or twenty Yards of *Far's Lane*.

Mr. At. Gen., What Sort of Ground was it? Was it not Marsh-ground?

Kemp, A Plain that builds Boats in Winter-time; put his Shallops into the Pond, otherwise it was very good Ground to grow the Northward; there were very many good Houses built, and since *Mr. Nale* had to do with *Shadwell*, they have built a *Mr. Croome's*, and built a *Water-house*, and two other Houses there.

L. C. J. Read the Survey again, that mentions *Croome's House* there.

(Which was done.)

Kemp, That was bounding Northward that Way.

Mr. Williams, It is Part of the eleven Acres now in Question.

L. C. J. Do not you contend for the *Brown House*?

Mr. At. Gen., For the *Wain-house*, we do.

L. C. J. Is not the Water house built upon Part of *Croome's Ground*?

Kemp, Yes, Sir.

Mr. Williams, When did you know this first?—*Kemp*, Fifty Years ago.

Mr. Williams, Was this Ground Overgrown or Garden then?

Kemp, Several Places of it were Gardens and Orchards; some Places had Houses, chiefly to the Northward, some good Houses and Orchards, especially *Mr. Croome's*.

Mr. At. Gen., Do you speak of the hill or the low Ground?

Kemp, The middle Ground chiefly, that lay Northward.

Mr. At. Gen., Do you know the *Lydney*, the *Billy Ground*?

Kemp, Up higher to *Ratcliff* high-way, I did.

Mr. At. Gen., Did you know the Ditch that came under the Bottom of the *Lydney*?—*Kemp*, The Stream did run in several Places, but the Ground was good Ground, Northward especially.

Mr. At. Gen., Were there any Houses built on the South-side of that Ditch?—*Kemp*, There were a great many built between the Ditch and the Thames, between *Ball-shay* and *Far's Lane*.

Mr. At. Gen., What, fifty Years ago?

L. C. J., Your own Time.

Mr. Williams, Call *Daniel Home*.—*Swear him*. (Which was done.)

Do you know the Mill and Lands in question?

Home, I knew it when it was a Mill.

L. C. J., How long is it since you left knew it?—*Home*, Forty Years.

L. C. J., Prithor, what Kind of a Mill was it?

Home, A Ground-shot Mill; the work in Water at *Ball-shay*, and it ran towards the West to *Far's Lane*, in several Branches and Ditches.

L. C. J., How? A Ground-shot Mill, I say?—*Why*, these Gentlemen say it was an Over-shot Mill.

Home, My Lord, it could be no Over-shot Mill, for the Water will not rise high enough to drive such a Mill; it ran in several Ditches to preserve a free rising to overflow the Ground. Besides, my Father, who was a Mill-wright himself, told me he had known it three-score Years, and knew it always a Ground-shot Mill: He told me of all the Mills about London, what they were.

Mr. At. Gen., Pray, how old was your Father when he said you so?

Home, He had known them, he said, sixty Years, and he has been dead twenty Years.

Mr. Williams, By the Mill was removed; he could not know it so long.

L. C. J., I know so Proof of it as his own Death.

Home, My Lord, there it was, he said.

Mr. At. Gen., Was there not a Pond and Ditches?

Home, There must be Ditches to receive the Water as it came in; but still the more the Tide came in, that filled up the Ponds; and as it went back again, it drove the Mill.

Mr. Williams, What Profession are you of, pray?

Home, I am a Mill-wright.

Mr. At. Gen., Pray, do they make use of a Trough in such a Mill?

Home, They do use an Over-shot Mill.

Mr. At. Gen., How is a Trough of Lead in their Lead. Do not they use a Trough in an Under-shot Mill?

Home, No, if it be by the Tide a Ground-shot Mill, there is no Necessity of a Trough.

Mr. Williams, We have a great many Witnesses to this Point. *Swear Grindly*.—(Which was done.)—*Are you a Mill-wright*?

Grindly, I am only a Miller.

Mr. Williams, Did you know the Mill in question?

Grindly, I cannot remember it, Sir.

L. C. J., How long have you known the Place?

Grindly, Thirty or forty Years: But I had no Acquaintance with that Mill they speak of; but I know it is impossible for any Over-shot Mill

Mill to be there: For I kept Part of a Tide-mill myself, and have done so for the forty Years; and I know the Water must rise at least ten, twelve, or fourteen Foot higher than it needs in a Tide-mill. For we take in our Water as the Tide comes in, and we have a Part of Gars that are hung with hinges at the top, which open as the tide comes in; but the water, as it goes out, shuts it again, and that keeps the water to stand three or four hours in some mills, and then we have only gates that belong to the wheel, and when we draw up the gates, the water goes out. We have no water that comes above the shaft, which is half the height of the wheel, which is sixteen foot high. To talk of an over-shot mill, the water must rise to high as to go over the whole mill.

L. G. J. And must draw all the town and country too. It is plainly so, Mr. Attorney, talk as long as you will.

Mr. At. Gen. Friend, Let me put this plain question; I would know, can they say a less than truth with this Tide-mill, as you call them Grabs.

Mr. At. Gen. Would not the springs in that parish carry an over-shot mill?

Grady. Sir, I have been the place all about many times; and I will say any man told to do that all the springs thereabout shall not produce a quarter enough water.

Mr. Williams. Where is *Gorge Gars*? Swear him.—[*Which was done.*]

—Do you know *Fox-lane*?—*Gars*. Very well.

Mr. Williams. How long have you known it?

Mr. At. Gen. Fifty years.

Mr. Williams. Did you know *Shadwell*, the well so called?

Mr. At. Gen. That I do, Sir.

Mr. Williams. Where does it, pray?

Mr. At. Gen. At the upper end of *Fox-lane* as we go westward, and just at the side of the Church-yard there is one now, and back'd over head, where they used to fish water; I never knew any other.

Mr. Williams. Was that called *Shadwell*?

Mr. At. Gen. I never knew any other but what I tell you of.

Mr. S. Attorney. Pray, what was usually taken to be the east-bound of *Wigmore*—*may*?

Mr. At. Gen. That well side of *Fox-lane* was called *Mary*-well, or *Well*-*may*, and that was the boundary to *Stephen's* lands; and eastward was always the lands of the Dean of *Paul's*, and I have known it this eighty-and-five years; nay, I was the first that ever built an house in *Fox-lane*.

Mr. At. Gen. Do you know the *Lysons*, on the high ground northward?

Mr. At. Gen. I know it not at this time.

Mr. At. Gen. This *Well* you speak of, did it not rise out of that ground?

Mr. At. Gen. It was by the Church-yard, that is now.

Mr. Williams. Sir, we hope we shall not need to be taught which is our inheritance; where is Mr. *Merr*? We shall soon, my Lord, unless the advertisement made by her Surveyor *Hobbs*. Pray, will you, Mr. *Merr*, tell the Court how many acres it is?

Mr. Merr. The land which is counted *Wigmore*-*may*, which is bounded on *Fox-lane* side, on the Dean's land well, upon *Grady* mill, *Wigmore*, *Nightingale*-*lane*, &c. if we take it to the upper ground, doth contain 130 acres; but take in that which is in question too, and it makes 141 acres.

Mr. Williams. Did you measure it too, Mr. *Lysons*?

Mr. Lysons. I did it too, Sir; and it is as he says.

L. G. J. How much is it?

Mr. Lysons. I took the whole, from St. *Katherine's* to *Fox-lane*, and it makes 140 acres before the upland and farland, and the like between *Grady*-mill and *Wigmore*-*may*; it is at least so much; it is, I think, somewhat more, the ditches being undermeasured.

L. G. J. Well, what is it all this while you say my brother *Gregory* for?

Mr. Williams. If your Lordship please, we have only a three question to ask Mr. *Bacon* *Gregory*; if the pleads to be *tenure*—[*Which was done.*]

Mr. At. Gen. You have claim'd the inheritance of it.

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Mr. At. Gen. You have claim'd the inheritance of it.

Deeds were forged. But we suspect it now no longer, for we have detected it, and will show as palpable, full-evident forgery upon the face of these deeds as ever was. I desire to be for the Deed of the 13th of November, in the 2d and 3d years of Philip and Mary, from *Margaret Hall* to *Sper*, and that of the 2d of December, in the same years, from *Margaret Hall* to *Conor*. I desire to be for both.

Mr. At. Gen. Come on, let us for this demonstration.

Mr. Williams. The Deeds have brought that evidence upon their own faces, that is 1000 witnesses.

Mr. Williams. Princes open the exception.

Mr. Williams. If your Lordship please to look upon them, the file of the King and Queen in both run thus: The one is, This Indenture, made the 13th day of November, in the second and third years of the King and Queen of England, France, and Scotland, James, and Ireland, Descenders of the Faith, Archbishops of *Archie*, Dukes of *Burgundy*, *Albion*, and *Brabant*, Counts of *Hainault*, *Flanders*, and *Tyrol*. The other is, This Indenture made the 2d day of December in the same year. Now in November and December, second and third of Philip and Mary, it was impossible for any man in the world to draw a deed in this form that those two writings are—

Mr. At. Gen. Is that your demonstration?

L. G. J. Pray, let me go on, mentions it is very ingenious.

Mr. Williams. My Lord, I had the first time my Lord *Cole* in his first testimony, not so to this particular file, for I know he is mistaken there, but for the denoting of forgery in general.

L. G. J. It is very well; pray go on.

Mr. Williams. My Lord, at that time King Philip and Queen Mary were, among other files, *Isid King* and *Queen of Navarre*, Princes of Spain and Sicily; they were called King and Queen of Spain, and both the *Spain* then; and lastly, *Burgundy* was never put before *Albion*. Now to give all this that I say, I have here all the Records of that time, and their files to be otherwise. Pray, We shall show the Acts of Parliament of that time. The first being the 2th of October, in that year, which was before their Deeds, and ended the 2th of December after. We shall first read the titles of the Acts of Parliament, and you will find them just as I have opened them. Read the Statute-Book.

Next read. 1. Acts made at a Parliament begun and holden at *Westminster*, the one-and-twentieth day of October, in the second and third years of the reign of our most gracious sovereign Lord and Lady Philip and Mary, by the Grace of God, King and Queen of England, France, and Scotland, and Ireland, Descenders of the Faith, Princes of Spain and Sicily, Archbishops of *Archie*, Dukes of *Albion*, *Burgundy* and *Brabant*, Counts of *Hainault*, *Flanders* and *Tyrol*, and there continued and kept until the dissolution of the same, being the ninth day of December then next ensuing.

Mr. Williams. Here in the Acts made by the public Council of the Kingdom, the file is in the ancient manner. And your Lordship observes there no small differences. Here first *Spain* is left out in the enumeration of the Kingdoms, and so *Sicily* and *Navarre* is instead of them. In the Deeds, *Spain* is put in before *France*, and the *Scots* made a Kingdom too. Secondly. Here in the file of the Acts they are called by Princes of Spain and Sicily, that in the Deeds is quite left out. And then in the Acts of Parliament, *Albion* is put before *Burgundy* in the Deeds *Burgundy* before *Albion*. And how this great alteration of the file should come to be put in a Miller's list, is strange. We have next an account of all the fines of *Henry* Terms, which was the next Terms following; for their first Deeds happen to be in *Michaelmas* Terms, and then the *Parliament* fine too. [*Which was read.*]

Mr. Williams. Here are likewise a line of the *Exchequer* Terms following, which these that fill the old file continued in all the public Records. And if we could as easily have brought all the enrolments of Deeds, that would prove the same. [*The End of Esther Term read.*]

Mr. Williams. Now, my Lord, we shall show when the file ceased, that was in *Trinity* Term after. [*The Read read.*]

Mr. Williams. But I cannot see how these Deeds could be truly made at that time, when they stand single, and none like them can be seen, except they come from the same forge that these do. I cannot believe it is his file, as he that drew his last for him could so long before properly what manner of file should be used.

Mr. Williams. Your Lordship has heard our Deed of the 2th of December, in the same year, read already; but we have here the Ledger-Book of the Church of St. *Paul's*, which cannot be made for a term, but was written at that time; we desire the file may be read there.—[*Which was done.*]

—But to go a little further, to satisfy your Lordship that they are very likely to be forged, we shall give some evidence that this is not an unusual thing with some people concerned in this case. The witnesses will name them to you, and give you an account of it. Swear this Lady and Sir *Charles* *Conrad*. [*Which was done.*]

L. G. J. Well, what is it you call their perjury?

Sir *John* *Trotter*. To speak plain, my Lord, we call them to give an account of my Lady *Joy's* forging a Mortgage from one Sir *William* *Salt*—*hall* for 1500*l.* of a house in St. *Martin's*-*lane*, to which surgery Mr. *Dagfin*, that Lady's husband, was pious, and what benefit he should have by it, you will hear. See *Charles* *Conrad*, pray, will you tell what you know of my Lady *Joy* in this matter?

Sir *Ch. Conrad*. My Lord, that which I have to say is this; my Lord, I am certain as my Lady said, Sir *William* *Salt*'s widow, was a house in St. *Martin's*-*lane*, and was so to her husband a year and a half before he died. The house hath been built backward, and the garden side they kept to themselves; but all the house that was first built, I took, and have it still.

My Lady *Willow* come to the house about three months before Sir *Willow* died, passing from her husband Sir *Thomas Ivy*: she came thither as a refugee; she had been before, and was received very kindly. He died, as I said, about three months after, and my Lady then desired to know how accounts stood between Sir *Willow* and her about monies he had lent her, and supplied her with. And upon the account she appeared to me, Sir *Willow* said she then took 4*l.* more out of my Lady *Willow*'s money, and told her, now *Madam*, I owe you 4*l.* She had been entertained as a guest there without paying any thing for it, and as his death she continued with my Lady *Willow* three quarters of a year after. And in my time (as she presented), in great kindness to me, she persuaded my Lady and me, that the lease of my Lady's house should be carried over to me, in trust for a debt of fourscore pounds that was owing to me by Sir *Willow* *Willow*. So I to my Lady *Willow*, *Madam*, I am in no doubt of my money, I pay as much rent as this in a year and more, I can pay my self that way, pray let me not meddle with any such thing, but, *Duffin* will be persuaded I intend to cheat them if I should. But still my Lady *Ivy* was at it, and prevailed upon my Lady *Willow* to send me to it. At last, upon their importunity, said I, if it be necessary for my Lady's service, let it be done what you think fit. She therefore gave directions to Mr. *Sutton*, and he came to me, and I directed him to draw a writing to turn over the house to me as a security. He asked me how much my debt was? Fourscore pounds, said I. Said he, I should for my Lord of Salisbury's lease to my Lady, for he must take out some things to draw this bill. He did it for me, and took as much by note out of it as he thought fit, to make the other by. Then a writing was drawn, this was in June 1679, or 1678, I am not certain particularly much, but she brings this writing, and my Lady *Willow* signed it by her self; and my Lady *Ivy* and Mr. *Sutton* were both witnesses to it. About a year after I heard that the bill on foot a Mortgage of her own upon this house from Sir *Willow* *Willow*. I wondered at it, because when the account was made up, the appeared to be in Sir *Willow*'s debt; and I told those that told me of it, I would believe it when I did for it. I was then informed the writing was at *Malborough*. She after went out of town, and comes back again in a little while, and this writing, as I heard, was drawn to several persons of my acquaintance, that came to me and told me she had sent it, but said I, so have not I, but when I see it I will believe it. At last Sir *John Wyl*, who was a relation of mine, I married his aunt, one day brought over this writing to me; and sold me he had got this writing at last, and leave from my Lady *Ivy* to let me see it. I looked upon it, and there I did for at the bottom, where the seal was, *Willow* *Willow*, and then I turned to look upon the witnesses names. No, says he, you must not let that, who are witnesses to the Deed; for say Lady *Ivy* made me promise, before she let me have it in these you, that you should not see the witnesses names. Then said I again, I have been enough to give me satisfaction: I was a little more concerned that the thing was not a reality but fiction, and so I told him. My Lady *Ivy* that would not part, the officer, provided Mrs. *Duffin*, my Lady's daughter, might have the advantage of the house, to release the matter.

L. C. J. Pray, Sir, for how much was the pretended Mortgage?
Sir *Charles Carter*. For 1500*l.* that Sir *Willow* *Willow* owed her; which I thought somewhat strange, seeing, as I said, the owed Sir *Willow* as much as his debts. At last I came to produce my writing, (for she told me I might give Mrs. *Duffin* a night to the house). Now I had not read over the writing made me, but now when I came to look upon it, instead of a Mortgage for securing my debt, mine was a Deed of Sale from my Lady *Willow*, whereby the lease and the lease from my Lord of Salisbury were sold me for fourscore pounds; at which I was a little amazed. My Lady was then pleased to say I was a cheat, tho' I had no hand in it, nor indeed would have had any thing at all done; but upon my Lady *Ivy*'s importunity, and my Lady *Willow*'s, I gave direction only for a Mortgage.

L. C. J. What was it that Satme took out of my Lord of Salisbury's lease?

Sir *C. Cat*. He was to take notes to draw a Mortgage of that lease by.
L. C. J. He got the notes tho', for ought I perceive, to draw another Mortgage by. A very trick, it smells rank of the *Kewer*.

Mr. S. *Stranger*. Pray, Sir *Charles*, did you ever pay any money by my Lady's order?

Sir *C. Cat*. I did lend my Lady *Ivy* 50*l.* the being in distress for money, afterwards it was made up 100*l.* About February 1679, it was made up 1500*l.* by agreement among them my Lady *Ivy* did relinquish that said Mortgage he had that fit on foot: and there was a Deed Tripartite made between one of the first, my Lady *Ivy* of the second part, and some Trustees for Mrs. *Duffin* of the third part, whereby the reversion was given to Mrs. *Duffin*, and my Lady confirmed it, and gave my Lady *Willow* a Bond of 1000*l.* in which Colonel *Gronow* was bound for her, that she should not trouble my Lady about the house; yet notwithstanding did the afterwards write to Mr. *Duffin*, at I have heard, that he would let it on foot again, and she should have half of what the had received.

L. C. J. The Inheritance of the house, it seems, is in my Lord of Salisbury.
Sir *C. Cat*. Yes, my Lord; Sir *Willow* *Willow* had the original lease from my Lord of Salisbury.

L. C. J. What direction did you give *Sutton* about it?

Sir *C. Cat*. To make a Mortgage only to secure fourscore pound.

L. C. J. And what did he make?

Sir *C. Cat*. An absolute Deed of Sale.

L. C. J. Was there no proviso in it, to be void upon payment of money?

Sir *C. Cat*. No, nothing but an usual Sale for so much money.

L. C. J. You say my Lady *Ivy* afterwards did relinquish her pretended Mortgage; pray had she nothing for it?

Sir *C. Cat*. Nothing that I know of, she joined in that Deed Tripartite.

Mr. *Willow*. What should dispose her to give Mrs. *Duffin* 1500*l.* if it was really owing her?

L. C. J. Is that Mortgage here among your writings, Mr. Attorney?

Lady *Ivy*. Indeed, my Lord, I would have brought it, if they had given the least notice of what they now talk of.

Mr. At. *Gen*. Sir *Charles Carter*, do you know that my Lady *Ivy* forged that Deed?

Sir *C. Cat*. Not I, but it did appear to me to be no true Deed, upon what I found and knew.

Lady *Ivy*. You must give an account for what you have said here—

L. C. J. Nay, *Madam*, pray do not be in a passion: he has sworn what he has said here.

Lady *Ivy*. If he doth swear it, he is *lawless*.

L. C. J. Nay, *Madam*, you must be more moderate in the Court?

Mr. *Willow*. My Lady thinks the best occasion to be angry, but it may be we shall give her more exercise for her passion before we have done. Pray, swear that Lady, Mrs. *Duffin*. Will you acquaint my Lord and the jury, what you know has been done by my Lady *Ivy*, or by her direction, in making and altering of Deeds.

Mrs. *Duffin*. My Lord, I did see Mr. *Duffin* forge and counterfeit several Deeds for my Lady *Ivy*.

L. C. J. Do you hear what she says, Mr. Attorney?

Mr. At. *Gen*. Yes, my Lord, we shall give an account of her sworn.

L. C. J. Truly, I hope I misheard her, and did not hear right what she said. Pray, *Madam*, speak it over again, and consider what you say.

Mrs. *Duffin*. I say, my Lord, I did see Mr. *Duffin* forge and counterfeit several Deeds for my Lady *Ivy*. The first thing that I do remember was in the Trial between her husband and she; Mr. *Duffin* did by her order counterfeit a bond from him to some third person for 1000*l.* and several letters pretended to be written from Sir *Thomas* to my Lady *Ivy* were counterfeit.

The next thing that I remember, Mrs. *Duffin* was writing upon a parchment; I asked him what he was writing; he answered me, He was counterfeiting one *Glover*'s lease, by which my Lady would get many hundreds of pounds, and for which he should have 500*l.*

I desired him to consider what he did, for before that time he had been accounted a very honest man. Some time after that, my Lady *Ivy* did upon

pique to my mother, my Lady *Willow*, let a-foot a Mortgage she pretended to have of the house in St. *Martha*'s-lane for 1500*l.* from my father.

She did once tell me she had had a Mortgage, as she pretended

not, but that it was drowned in a trunk of writings coming from

Malborough. Said I, my mother and Sir *Charles Carter* will not believe it, if you do not let them see it. I am furnished as to my concern in it, and would not have you proceed in it, for she pretended the did it for my advantage. But afterwards Mr. *Duffin* and she did agree to make a writing, in my sight, of a Mortgage.

L. C. J. Was my Lady *Ivy* by when the writing was made, as you say?

Mrs. *Duffin*. She was by, giving him order how to make it, and what

ask he should use to make it look old; and they forced her to make the

last, and to keep it close to put it in it to make it look old.

Mr. S. *Stranger*. Now will be the time to show my Lady's letters.

L. C. J. *Misheer*, I would ask you one question by the way, whether

while their things were doing at any time, any body did come in and

give you any interruption?

Mrs. *Duffin*. My Lord, Mr. *Duffin* and my Lady made me often-

times stand at the door (for we were but lodgers) that no one might

come and disturb them, and I never remember any that came in thither

but one Mr. *Sutton* an Attorney, my Lady's Attorney.

L. C. J. Did he see any of this done?

Mrs. *Duffin*. I cannot say he helped to do any thing, for when he

came in, they sometimes sent me out to see that no body should come

upon them; and so what he did, I cannot say. But he was let in when

Mr. *Duffin* was counterfeiting for my Lady *Ivy*.

L. C. J. When was this; about what time?

Mrs. *Duffin*. Of the day, my Lord?

L. C. J. No, how long ago is it?—Mrs. *Duffin*. It might be about 20, or 30.

L. C. J. You are my Lady *Willow*'s daughter, I think, and married *Duffin*?

Mrs. *Duffin*. I did, my Lord, I am her daughter.

Mr. *Stranger*. Pray, what did they do to the Deeds they made, to

make them look like ancient true Deeds?

Mrs. *Duffin*. For the making of the outside look old and dirty, they

used to rub them on windows that were very dirty, and smear them in

their pockets to tressle them, for some weeks together, according as they

intended to make use of them.

Mr. At. *Gen*. My Lord, as it happens, we have that Deed for talks

of, called *Glover*'s lease, here.

L. C. J. Ay, I suppose you have such a Deed; it is a famous Deed in

Windsor-*Isle*.

Mr. At. *Gen*. Here it is, we desire she may look upon it, [*Read* *she* did.]

Mrs. *Duffin*. As far the Deed, I cannot fancy this is the Deed, there

have been too many made by them. But he did counterfeit a Deed that

he told me was one *Glover*'s lease.

Mr. *Willow*. *Misheer*, you were going on, to tell how they did alter

their Deeds they made. Pray tell us how they used to lay them on the

Balconies, and any you know of the art.

L. C. J. Ay, how was it?

Mrs. *Duffin*. When they had been rubbed upon the window to make

them look dirty, and they were to pass for Deeds of a great many Years

standing, it was used to lay them in a balcony, or any open place, for

the rain to come upon them and wet them, and so the next fast-fresh

day they were exposed to the sun, or a fire made to dry them badly, that

they might be believed.

L. C. J. Is your husband dead or alive?—Mrs. *Duffin*. Dead, Sir.

Mr. At. *Gen*. How long has he been dead?

Mrs. *Duffin*. I was not at his death with him, he died beyond sea.

L. C. J. Was your husband alive when Mr. *Jehon*'s Business was?

Mrs. *Duffin*. Yes, he was.

L. C. J. Yes, I know he was in Court; tho' I asked the question, I

remember all that business.

Mrs. *Duffin*. I was subpoena'd in at that time, but my Lady *Ivy*

would not let me go.

L. C. J. Pray, *Misheer*, what had your husband for his part?

Mr. *Willow*. Had he any share of the money lent by Sir *Charles Carter*?

Mrs. *Duffin*. My Lady *Ivy* gave him an annuity of 100*l.* of Sir *Charles*

Carter's money.

Mr. *Willow*. Do you know any body else that had any of that money?

Miss.

Mrs. Duffin. The Attorney had took of the false money too.

L. C. J. What Attorney do you mean?—Mrs. Duffin. Mr. Selous.

L. C. J. Had he, how came he to deliver it?

Mr. Duffin. Yes, Madam, what do you know of counterfeiting any false?

Mrs. Duffin. My husband once had the imposition of a seal in his hand, with which he said he was going to use Mr. Duffin's, to have it counterfeited, & I do not remember what the seal was.

Mr. Duffin. When the dock-wire witness, how did he use to put the money to them?

Mrs. Duffin. I have seen my Lady herself write some great Letters of the names laid upon other papers, which Mr. Duffin could not so well hit, and he has writ the self.

Mr. Duffin. Can you tell the names?

Mrs. Duffin. Truly, I do not remember what names.

Mr. Duffin. We have another witness who will give you an account of some Letters of my Lady's, which we shall desire to be read. *Witness Elizabeth Key. (Hush now don't.)*

Mr. At. Gen. She talks of Glor's lease.—

L. C. J. She says, she does not know whether that be the deed, there were so many forged, Mr. Attorney. But the witness thou, my Husband did forge a writing he called Glor's lease.—

Mrs. Duffin. She had two or three mortgages forged.

Mr. Duffin. Come, Madam, where have you these Letters?

Mrs. Duffin. I had these Letters from Mr. Duffin.

Mr. At. Gen. Why, where had you these bodies?

Mr. Duffin. That is the ask I use Mr. Duffin's for my Lady's

with, at Mrs. Lee's House, at the table in the kitchen.

L. C. J. Who did he write for?

Mrs. Duffin. For my Lady's, I did not know what they were that were written, but he said they were forged; and with ink out of these bottles he said he could make new-written writings look like old ones very soon.

Mr. Duffin. Did you ever speak with my Lady's? Do you know her hand?

Mrs. Duffin. I do not know these Letters to be her hand; but Mr. Duffin gave me them as her Letters.

Mr. Duffin. Sir Charles, General, pray, will you look upon them; you know my Lady's hand.

Sir Charles. I do for—they are all of a hand, and I think they are my Lady's. I believe it truly.

Mr. Duffin. Then is signed T. Lee. *(All the Letters were read.)*

Mr. Duffin. Your Lordship is one of these Letters tells Mr. Duffin, he intends to let Sir William Selous's mortgage on foot, and he should have half what he recovered. If it were a true mortgage, why should he have given him half?

L. C. J. They were very great together, that is plain; they were very false. What were Mr. Duffin's merits towards my Lady, I cannot tell. Will you go on? It is late.

Mr. Duffin. This is all we shall offer at present, till we have occasion further from them.

L. C. J. Well, what say you to this, Mr. Attorney?

Mr. At. Gen. If they have done—

L. C. J. They have, they say.

Mr. At. Gen. Then may I please your Lordship, and you Gentlemen of the Jury, I shall begin to answer their evidence about the self. They have produced some imaginative evidence out of many Records, to convince us of the supposition. In truth, it they had not brought in of this very thing, it had been a thread objection, because we could not have been persuaded to have given an answer to what we could not have fancied: we should have been accused of. But upon their words they have got as upon the search as well as they, and we can give as good an account of it. They tell you they had their hint from my Lady's; but that has had them into a great error, for he is mistaken himself in the computation of this time, as he is in a great many other things.

Mr. Duffin. I know he is mistaken; but I depend not upon his remarks of that time. I had only, I had the general hint about detaching fortunes from thence.

Mr. At. Gen. But yet for all your confidence of the demonstration, your foundation fails: For, my Lord, to refute the fact, we shall show that the King of Spain, Charles V. who was likewise Emperor, reigned his Crown the 25th of October, in the 26 and 36 years of Philip and Mary. It is true, the Parliament-Rolls, in the title of these relating to the first day of the session, there the file that was used at first could not be altered. But the fact of their being the King and Queen of Spain, was so notorious to all the world, that we shall show you is mistaken of the Rolls of that year, the title was in our deeds, in that the title might be various: But that will not prove our deeds false. It may be, the Casars of Law might not take notice of it, as to alter the file till the 11th of May, though we have not searched for far among them, but in the common conversations which are upon Record in the Rolls, there it is altered. And as to the time of their becoming King and Queen of Spain, we have an History that tells you the very day when the King reigned, which was the 25th of October.

L. C. J. I tell you, Gentlemen, methinks Mr. Attorney has been very forward to do, in giving very imaginary answers to two objections I put, they would give delivery Mr. Noble's title to the land, by a piece of art once that they had not had, but that Mr. Noble had brought of it and that was the letters, which, with much confidence of the victory, was produced: and yet, when it was so, to me it seemed the flabbergasting enemy the defendant's Cause had; but that you are to have with you, and must judge upon it. Now he tells you again, Mr. Noble has been a blab of his tongue, and could not keep the secret to himself, but must bring that the deed were forged, for the title of the Queen's name is changed, and by this bringing they have invoked the business, and can show Records for it. But now instead of Records, the up shot is a little story of History. Can you not an answer to these great numbers of Records brought by the other side? Is a printed History, written by I know not who, an evidence in a Court of Law?

Mr. At. Gen. My Lord, besides that, which we must submit to your Judgment, whether, upon such a point of fact in a foreign Country, to be done such a day, a foreigner's History, not printed for this purpose, shall be a sort of evidence, but I say, besides that, here is a Gentleman, Mr. Clerk

that fetched the Rolls, and he will tell you what they are in this point.

Mr. Clerk. I did fetch in the Rolls, and find many in that year like these. And my Lord's Cause is utterly mistaken; he says it was not altered till the 4th and 5th years of Philip and Mary.

L. C. J. I care not what my Lord's Cause says, but what the Records say, let us see them.

Mr. Clerk. I saw a great many in that year.

L. C. J. Lord, Gentlemen, what do you make of us, to keep as here with I do not know what? Mr. Attorney, he tells us that Mr. Noble was to great a blockhead to bring this, and so we were prepared for an answer; but all the answer is, my Lord's Cause is mistaken, and there are many Records, but we have none of them, *Præsumptum*, *Præsumptum*. If he did bring us, and you know it, and would not bring records to wipe off the objection, it is ten times worse than if he had been unwisely without an exception of it.

Mr. Duffin. My Lord, I dare affirm that there are none of the Rolls of that year in, till after Easter-Term—

L. C. J. Lord, Sir, you must be cunning too, we tell you your objection was very ingenious, but that must not make you insolent; you cannot say any, but you must be cunning over it. The objection is now upon them, let them answer it if they can. Have you any of the Records here?

Mr. At. Gen. We have not, it seems, my Lord.

L. C. J. Then this must pass unanswer'd, and must be left to the Jury.

Mr. At. Gen. But, my Lord, they have got a little farther in this case, and indeed far more than becomes them, I think, to lay assertions upon my Lady's Cause, as if she were frequently guilty of forgery. And for that Sir Charles Carter has said, that the deed purporting to be a mortgage of a house in St. Martin's-lane for 1500*l.* and this mortgage, he says, he was told of by some that did not; whereas he did likewise desire to see it; and without seeing it, he declared, he would never be satisfied of the reality of the thing; and thereupon Mr. Solicitor *Wright* brought it him, and he saw it, but was not permitted to see the witness's names, and thereupon he was more dissatisfied than before about it. But if Sir Charles Carter had given any the least intimation of such a thing, now we would have credited them with a light of it in Court, where he should have had his full view, for my Lady has a bill, and it is a true mortgage, and for a real evidence. But he says this is related, and he did that, as it happened, to suppress any inquiry after it. But with reverence to Sir Charles Carter, the fact is otherwise. My Lady Selous's deed, from a debt from my Lady's, for nine years due for four Pences; and the reckoning being made according to my Lady's quality, was made so high, that it paid off the mortgage. But he has the deed still.

L. C. J. But what say you to the deed of sale, and my friend *Swan's* note-out of the lease, and the debt of 50*l.* and that, but a little before acknowledged by my Lady—

Mr. At. Gen. I give an answer to that, we say, he has been pleased to give me a great deal of pretence; and as he is master of the commission, to adorn the Story with abundance of flourish of his own kindness and interests—

L. C. J. Mr. Solicitor, you are not to judge of that, whether it be flourish only or substance; the Court and the Jury are the Judges of that, and truly I think it very material to the Cause; I assure you I do; for the debt be taken off as it can, it thickens very much; I must speak my mind.

Mr. At. Gen. When I am over-ruled, I acquiesce in the Judgment of the Court.

L. C. J. Pray, Sir, apply yourself to answer the evidence.

Mr. At. Gen. I do so, my Lord, as well as I can. The next witness is this Gentleman, Mrs. Duffin; she swears, that she saw her husband, Mr. Duffin, counterfeit many deeds, she does not particularise them: And here have been likewise several Letters read that did import a trans-action and correspondence between my Lady's and him.

L. C. J. Pray, Mr. Solicitor, remember the words the law that lease of Selous's, and that called Glor's lease.

Mr. At. Gen. My Lord, this witness that swears this, is not only a Person fit to be believed, but accompanied by a Record; and for that, my Lord, I shall shew you. Mr. *Jehyns*, as we well know, had his story for the matter about which the new witness: for Mr. *Jehyns*, on the behalf of Alderman *Forster*, undertook to pay 50*l.* to Mr. Duffin, to procure somebody to trace the deed, called Glor's lease, as he forged. Upon this deed was an information exhibited in this Court against Mr. *Jehyns* for falsification; and upon full evidence *Jehyns* was convicted for his endeavour. And the Record of this conviction we have here, and desire to have produced and read.

L. C. J. And I tell you, Mr. Solicitor, that is no evidence in this Cause.

Mr. At. Gen. Why, pray, good my Lord, did not they here just now

L. C. J. But the information put in by Mr. Attorney *Noble*, pray, remember, was not sufficient to be read, because we against any of the Parties, had three Parties.

Mr. At. Gen. But pray, my Lord, give me leave to apply it to the objection here made in our case, to the credit of our deed. They say it is false, because my Lady's said to forge deeds; and particularly Duffin, they say, did once forgive her Glor's lease. Now to answer that, we came to show that my Lady's did not forge Glor's lease; but there was indeed an offer to forgive Duffin in secret if forged, when indeed it was not, for which trick *Jehyns*, that was the agent, at allurement, was convicted; and that conviction is, I think, a good evidence that it was not forged.

L. C. J. None in the world, Mr. Solicitor, and that from the very evidence that has been given in this Cause this day. For it is plain, if you will believe this woman, [and yet let us go to the contrary] that there was coming into the Court to have sworn the truth, which would have perhaps cleared *Jehyns*, but my Lady's would needs keep her away. Now if Duffin were to give a great name to forge, he would not think to swear, so private that he forgery: And then how easy a thing was it, had *Jehyns* been the great Saint in the World, to have got him convicted upon what Duffin came to swear against him; though, had she come then in, Duffin would have appeared and not as all fit to be credited.

Mr. At. Gen. My Lord, I have then one thing more to offer; I cannot tell indeed whether it be material, for it from I have been in unhappy as to offer more things that have not been thought material.

L. C. J.

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indebted 1000. upon her taking the four pounds from my Lady Selkirk, if she had to great a sum owing her. And when a lovely answer is thus given by the Countess for my Lady Jay, that she and others were called upon for nine years diet? Whom Sir Charles Greville's women, the owned herself upon the account indebted 1000. and there was no borrowing for diet, but that she had grain for three quarters of a year after Sir William's death, as she had in several times before.

And now, while it is in my memory, I would remind you of one thing more before we come to the other witness, there is a thing that to me seems this business very home upon my Lady Jay: How comes it to pass my Lady Jay should be so wonderful kind to my Lady Selkirk's daughter, as to part with 1000. to be forced, to have the house filled upon her, without any consideration in the World that I can hear of? That is such a melting piece of kindness, that they would do well to find out some plea to authorize it. It seems upon Sir Charles Greville's desire to see this pretended mortgage, and its being brought him by my Brother Wm., who is now dead, the was wonderful careful that he should not see the witnesses to it, it was to be precious and tender a thing: But, alas! it is all melted down and gone of a sudden, without any consideration at all whatsoever; and the can readily join up Sir Charles Greville to settle this upon Mr. Duffin, the Lady Selkirk's daughter, and enter into bond not to disturb the enjoyment.

Thus there comes another evidence, and that is the Gentleman Mrs. Duffin, who it seems they would have to be a loose sort of creature, but she thinks she has a good reason upon her tongue: for she does directly swear that the was present, and saw Mr. Duffin her husband forge that very mortgage. Sir Charles Greville speaks of it, that my Lady Jay directed it, and gave her order to put fifteen on the ink to make it look old; that the law him writing in a parchment, which he told her was Greville's leaf, and other things, and all for my Lady Jay. Nay, she tells you my Lady Jay was to extraordinary an artist at the making of such an affair, that this rather-woman, Duffin, was not so desirous of it as she; for he could not write the four great Letters of the name that were to be put to the forged deed, but she did that herself, and the rest he did. How far she is to be believed, I must leave to you; you hear what is objected against her about the forgery in her belly; and I do not know what; whether that will take off the credibility of her testimony, I leave to you. She doth give a very firm and large account how they used to order their matters to make the ink look old, (as I said) they put fifteen on it; then they rubbed the outside of the deeds in dirty windows, and after that used to lay them in a balcony for the rain to come upon them in the night, and so dry them in the sun, or by the fire, to throw them up. And this she says was their method, and process they used. All which the Plaintiff's Counsel urge, to show the probability that these deeds of theirs are forged.

Then they tell you, which is yet somewhat more to strengthen her evidence, there is a woman, that though she speaks out of Mr. Duffin's mouth, and that can be no evidence against my Lady Jay, yet says, she received from him a parcel of Letters, which are sworn by Sir Charles Greville to be all of my Lady Jay's own hand-writing; which Letters have been read to you: and they show a great familiarity between my Lady Jay and Mr. Duffin, a great care and concern for the promotion of this Duffin, the Gentleman's husband, and of some deeds that were likely to be thought true and undisputed. And she tells him as the latter end of one, that she is solicited till the trouble be over: But she was relieved to see on 1. Sir William Selkirk's mortgage, and if that thing did go well, he should have half.

That supports the credibility of the woman's testimony: But besides that, there is another thing that looks very unwarranted, because Mrs. Duffin does directly swear, that out of the 1000. paid my Lady Jay by Sir Charles Greville, 2000. was paid and given to her husband, and Mr. Selkirk forthwith had 2000. more: For what service, I wonder, must my Lady Jay be so liberal to Mr. Selkirk and Mr. Duffin? Let Mr. Selkirk thank and make himself as he pleases, it will tick upon him; and I must confess it looks unwarrantable, his getting my Lord of Selkirk's lead to pick notes out of it, and then to have such a mortgage trumped up in this manner. It is very rank, I assure you.

Thus is the substance of the evidence that has been offered by the Plaintiff, to prove and induce you to believe these deeds forged.

Now, in answer to this, they on the other side would offer, that Sir Charles Greville's evidence is a surmise upon them. They say they have such a Writing, and such and such Deeds, Greville's leaf, and Selkirk's mortgage; but they are not prepared to give such an answer as they would have done, had they had none. Here has been likewise great struggling and striving to have the verdict read to overthrow Mrs. Duffin's testimony; but that cannot be allowed to be given in evidence between these parties. Then they would have read her husband's oath, he being dead; but that is no point of evidence at all neither; for in case the man were alive, it would not be evidence what he should have heard his own wife say. If both of them indeed had been heard together, and testified against my Lady Jay, it had been good evidence; or they both might have testified for her. But by the Law the husband cannot be a witness against his wife, nor a wife against her husband, to charge them with any thing criminal, except only in cases of high-treason. This is no known a common rule, that I thought it could never have borne any question to debate.

This is the substance of the evidence on both sides, as near as I can recollect it, save only that which indeed I should have mentioned before,

the Defendant had produced an exemplification of a verdict obtained the last Michaelmas Term. To which they for the Plaintiff answer, We were not then prepared to answer your deeds, which were very new, surprising and unexpected to us: We have now given new evidence that we never gave them, and it was a verdict obtained by forgery: We now show our boundaries better than we could then, and so that they make to be the result of the whole matter.

Now upon the main, after this very long evidence, though the Cause has been discussed as much as ever any Cause could be discussed before; and though the event of it be a matter of considerable value, yet the matter of fact is as clear as the sun at noon-day; and a plain point of fact it is, and must be decided upon. If we do admit all their deeds to be good deeds, without any consideration of the forgery, pre or con, yet it is the well-polls, ditch, orchard, garden, &c. can be taken to be seven acres; then the boundaries upon the mill or half-bay, which may be the Fane's law, that will answer both the deeds of the Plaintiff and of the Defendant, and though never so many houghs be built upon it, it will signify nothing in the Cause. And that it is so, whereas the Defendant's surveyor swears, that 200 acres will not be made up without the lands in question; the Plaintiff has brought two surveyors, that swear there is full 200 acres, and more, without them. So you have two surveyors on the one side, and one on the other; and you yourselves have viewed it.

After this long evidence, Gentlemen, you have had as good an account of the substance of it, as I can give you by my notes and memory recollect. If any of the Gentlemen that are of the Council for the Plaintiff, or for the Defendant, do think I have omitted any thing that is material, on either side, they have free liberty to remind the Court of it. You are the Judges of this fact, whether this land do of right belong to the Plaintiff or to the Defendant: And I leave it to your consideration.

After which, the Jury withdrew to consider of their Verdict, and the Court adjourned. That Evening the Jury gave in a private Verdict before a Judge; and appearing the next morning at the Bar, were called over, and demanded if they did abide by the Verdict they had given the night before; to which they answered, Yes; which being declared by the Secretary to be for the Plaintiff, the Jury were discharged.

Then a motion was made by the Plaintiff's Counsel, that several deeds produced by the Defendant, that were detected of forgery, might be left in Court, in order to have them pursued, and convicted of the forgery. The Court, upon debate of the matter, and the Plaintiff's Counsel declaring they would prosecute an Information of forgery, the deeds of the 13th of November, and the 22d of December, 2 and 3 Philip and Mary, were ordered to be left with the Clerk of the Crown till further Order; and in the mean time the Plaintiff to have Copies of them from the Clerk; and by Rule of Court a Trial at Bar is ordered in Michaelmas Term.

In Trinity Term there was an Information against Lady Jay, for forging and publishing the said two Indentures, as follows.

Rex versus Jay.

Information against the Lady Jay, for forging and publishing two Indentures, Trin. 36 Car. Second. Rot. 42.

¶ Q. Uod Theodofia Bryan, de. &c. alius dicti Theodofia Wym, de. &c. Mide' ex fac' pcepti, capite & magnanimitate fubfcrip'to falfo & fraudulenti fabricavit & fecit & fieri & fabricari cauifit quoddam falsum falsum continens Matrimonium videlicet, The Indenture made the 13th Day of November, in the 2d and 3d year of the Reign of our Lord and Lady, Philip and Mary, by the Grace of God, King and Queen of England, Spain, France and Ireland; Defenders of the Faith, Arch-Bishops of Austria, Duke of Burgundy, Milan, and Brabant; Counts of Hainburgh, Flanders and Tyrol; Bishops Marcellus Hall of Radcliffe, master, on the one Part, and Richard Roper, Citizen and Mayor of London, of the other Part, unto which, &c. proce per pref' falsum & contrarium falsum pmissum inquit & apparet Quodq; pref' Theodofia Bryan alius dicti Domina T. Jay pedes, sollicita, &c. apud, &c. apud, &c. scient' fubfcrip'to & falso pref' falsum & fabricatum falsum publicavit & publicari cauifit ut verum falsum pref' Marcellus Hall fignil'at & delib'rat' p. pref' M. H. ubi reuera eadem T. B. alius dicti Domina T. Jay aduoc & iudex bene facit & inuolunt falsum falsum continens falsum & fabricatum falsum pmissum inquit & apparet Quodq; pref' falsum & contrarium falsum pmissum inquit & apparet Quodq; pref' falsum & fabricatum falsum uti mentionat' publicavit & publicari cauifit ut verum falsum pref' M. H. fignil'at & delib'rat' per postea M. H. ubi reuera eadem T. B. alius, &c. aduoc & iudex bene facit & inuolunt falsum uti mentionat' falsum fore falsum contrarium & fabricat' Anglice Paged, & non falsum falsum pref' M. H. nec per ipsum fignil'at aut delib'rat' Ad gratiam dante' eisdem G. B. in contrariu' dicti Domini Regis nunc Legatus; fear in malum & pernicioum exemplum omni al' in tali causa delinquent' ac contra pacem dicti Domini Regis nunc Coronae & dignitatis suae, &c.

XXXVIII. The Trial of William Disney, Esq. by the King's Special Commission of Oyer and Terminer, held at the Marshalsea in Southwark, on Thursday, June 25, 1685, for High-Treason.

A SPECIAL Commission of Oyer and Terminer for the County of Surrey, being appointed for the trying of Mr. Disney, before the Lord Chief Justice of England, and other his Majesty's Judges; he was brought before the King's Commissioners at the Marshalsea, on Saturday, on June 23, in order to his Trial upon an Indictment for High-Treason: "For printing and publishing a most vile and traitorous Paper against his most sacred Majesty and his Government, to-wit, *The Declaration of James Duke of Monmouth, and the Nobles, Gentlemen, and others now in Arms, &c.*" And being arraigned thereupon, he pleaded Not guilty, and desired he might have Counsel granted him, but was denied; the Court telling him it was not allowable in capital Cases: yet upon his further request, he had leave to make use of what Books he thought fit to prepare for his defence, and allowed till the 25th.

On Thursday the 25th, he was brought to his Trial, in the Mellinger's docket, that was upon a Warrant for the apprehending of William Disney, Esq. he took some files of Musketeers, and two or three Gentlemen to his assistance, when approaching to the house of one Tyrril, a Gardener in the parish of Lambeth, on Monday June the 25th, 1685, between twelve and one of the clock in the morning, he broke into the apartment of Mr. Disney, where entering his chamber, he found the prisoner in his shirt, who cried his breeches! but the Mellinger replied No, saying, if he had a Night-Gown he might put it on. Immediately after viewing his breeches, there was found a dagger in his pocket, and also some other things, likewise a brace of pistols, and a great hanger in the posture of a Scimitar.

His maid *Sarah* *disent* was supposed to be in bed with him, by reason her cloaths were upon his bed: his daughter about eleven years of age otherwise abouts was in another part of the room a-bed alone. The Mellinger further deposed, that getting into the Printing-house, he there found the Forms (as Printers call them) of the traitorous Declaration in the Printing-rooms, there being by computation about 950 of them printed on one side, and about five of the said traitorous Declarations perfect. Upon the Mellinger's questioning how they came there, he pretended ignorance. The evidence appearing very plain, and he making little or no defence for himself, was found guilty of High-Treason, fastened to be drawn, hanged, and quarter'd, which was accordingly done at Newington-Common in the County of Surrey, on Monday the 29th of June, 1685, and his quarters set upon the City-gates.

A true and full Account given by the Messenger of St. George, concerning the Behaviour and last dying Speech of William Disney, Esq. June 29th, 1685.

BETWEEN nine and ten of the clock in the morning, I was sent for by the High Sheriff of Surrey, to officiate as Ordinary at the execution of the prisoner at the Marshalsea. Before he was brought out, a neighbouring Miller and I (upon the Sheriff's motion) went into the room where he was, when the reverend Parson (having first him the right before) ask'd him whether he had considered of those things which he had formerly offer'd him; and did very piteously press him that he would give glory to God, by a full and ingenuous confession of his crimes, intimating to him the fatal consequences that might have followed, if he had persisted that evil way; how many men's lives might have been lost in the quarrel, whose blood he was so far guilty of, as he contributed to the increase of the rebellion, by his printing the traitorous paper (or words

to the same effect). To which the prisoner answer'd (with some signs of discontent) to this purpose, that he hoped (speaking to the Miller) he did not come to press him to embroder himself now! that he had nothing to say that might bring any person into trouble, and his time was short, so he desired not to be troubled about any such matter; so that he would pass'd over we parted. Finding him resolved not to make any discovery, I only told him, I did intend to meet him at the place of execution, and he thanked me.

When he came to the gallows, and was in the cart, I came to him and asked him, how he desired to improve those few moments of his life that were yet to come? He answer'd, in prayer. I asked him, Will you pray for yourself, or shall I pray for you? He answer'd, I will pray, and desire you to pray for me. Whilst the executioner was preparing the rope, I showed him the Bible, saying, Sir, what comfortably precious do you remember out of this word of God for your present use? He answer'd, *Jesus Christ* came into the world to save sinners, of whom I am chief. And then he proceeded in general terms to acknowledge himself a great sinner against God; but affirm'd that he had made his peace with God, that he had confid'd his soul with humility and tenderness, and had beg'd God's pardon; and did not doubt but God had for the merits of his Son Jesus Christ pardon'd all his sins, and he was now under very comfortable hopes that he should soon be happy, not upon the account of his own merits, but the merits of Jesus Christ. I told him this was very good, if his hopes were well grounded. He replied, His hopes were grounded on the Scriptures, which assured him that Christ did to save sinners. Whereupon I recounted to him some other gracious promises of God to true Penitents; as that of *Abraham*, *If the wicked man turn away from his wickedness, and doeth that which is lawful and right, he shall save his soul alive, &c.* After which he made his address to God in prayer, that he would forgive him all his sins, and sanctify this his affliction to him; and prayed God to bless the King, and that he may be merciful and kind to his subjects, as well as just to his enemies: he further observed, how gracious God was to him in giving him this admonition, (as he call'd it) for God might have taken him off by some sudden death, or deprived him of his senses; And then (he said) it must have been worth my me, but now God hath given me time to be think myself; so that, though the labour and the shame of this death, having to many spectators (upon whom he look'd) may somewhat discompose me, yet I have peace and comfort within. Afterwards he desired me to pray with him, which I did briefly, according to his mind and present example: and closing with the Lord's Prayer, he answered every petition deliberately, and calmly: he declared that he lived in, and did now die in the Communion of the Church of England, which he reputed again in these words, the Protestant Church of England. After Prayer, I asked him, whether he would sing some part of a Psalm? He answer'd No. Then I ask'd him, whether he had any thing more to do or say? He answer'd, I have nothing more but to return you thanks for your care of me. And I pray God bless you and bear your prayers for me, and mine for you, and our Saviour Christ for us both. And so I left him going to his long home.

Thus, according to the best recollection of my thoughts, is the sum, and as near as I can remember, the words that pass'd between Mr. Disney and me.

Andrew Wilson.

XXXIX. The Trial of Sir Edward Hales, Bart. for neglecting to take the Oaths of Supremacy and Allegiance, with his Plea thereto, upon the King's dispensing with the Stat. 25 Car. II. and the Opinion of the Judges thereupon, 1686.

Palmer, 2 Jac. II. In the King's-Bench.

Arthur Golden Plaintiff, in an Action of Debt of 500l. grounded upon the Act of 25 Car. II. for preventing Dangers from Popish Recusants.

Sir Edward Hales, Bart. Defendant.

THE Plaintiff declares, That the Defendant, after the first day of *English-Term* 1673, *sc.* 28 Nov. 1 Jac. II. at *Hockington* in Kent, was admitted to the office of a Colonel of a Foot-Regiment.

That being a military office, and a place of trust under the King, and by authority from the King.

And the Defendant held that office by the space of three months, next after the 28 Nov. 1 Jac. II.

And from thence, till the time of this action begun, he was, and still is an inhabitant and resident of the parish of *Hockington*.

And the Plaintiff taking it by protestations, that the Defendant within three months next after his admission into the said office of Colonel, did not receive the Sacrament in manner as the Act directs, but neglected to receive it;

Averts, that the Defendant did neglect to take the Oaths of Supremacy and Allegiance, either in the Chancery, or in the King's-Bench, or at any Quarter-Sessions in Kent, or in the place where he was resident, either the next Term after his admission to his said office, or within three months after.

And that the Defendant after such neglect, *sc.* 10 Mar. 2 Jac. II. at *Hockington* in Kent, did exercise the said office, and still doth, contrary to the Statute of 25 Car. II. * for preventing dangers from Popish Recusants.

Where-

* 25 Car. II. cap. 2. An Act for preventing Dangers which may happen from Popish Recusants. For preventing dangers which may happen from Popish Recusants, and preserving the minds of his Majesty's good Subjects, he is enacted, &c. That every person that shall bear any office, civil or military, or who shall have command or place of trust under his Majesty, or within the Realm of England, &c. shall personally appear in the Court of Chancery, or at the King's-Bench, or at the Quarter-Sessions in that County where he shall reside, within three Months next after his admission into any of the said offices, and there, in open Court, take the Oaths of Supremacy and Allegiance, and shall also receive the Sacrament of the Lord's Supper, according to the usage of the Church of England, in some Parish-Church, upon some Lord's-day, immediately after Divine Service.

And

prerogative, but to secure him from his enemies, and for the preservation of the Government; and the King's bailiffs what will be used for his own security, and the Government's prerogative. No Act of Parliament can discharge the subject from his allegiance which he owes to the King, every one is bound by his allegiance to serve his Prince when he shall be required. Therefore an Act of Parliament can disable any man to serve the King. But they object, that this Act doth make no one incapable, but all his own election.

If this were so, it would be in the election of some or all the subjects to incapacitate themselves to serve the King, and the King would be unwilling; for if it were not in the power of the King to force the subject, he would not (it may be said) be served at all, as in the case of Sir John Rolfe, cited by the other side; he neglected to take the oath, and thereby the office became void; so that the next elected might refuse, and the next. In the mean time the King's service lies neglected, and no business of the Country can proceed, for want of a Sheriff. To pardon murder, is a prerogative solely and infrequently incident to the King, who may dispense with Statutes restraining it, 12 *C. 13*. He may dispense with any Statute. *Hobart* 146. 3 *light*. 339. In 3 *July*, the Lord Cokes speaking of Acts of Parliament that were made to release the King's power of pardoning murder, says, that such Acts are good for King's service, but not binding. *C. 18*, 19. There are several Statutes cited, with which the King by his prerogative may dispense, as the Statute 36 *H. VI.* which doth enact, that no man shall be Sheriff of one County two years together. Yet it was adjudged by all the Judges of England, says that Book, that the King may dispense with it; the Statute of 4 *H. IV.* 31, that no *Abbot* shall be Justice, or other Officer whatsoever in any part of *Wales*; and yet the King may dispense with it. The Statute 8 *R. 2*. 22. and 33 *H. VIII.* 24. do enact, that none shall be Justice of the Peace in the County where he was born, and yet the King with a special non assensu may dispense with that Statute. And in *Parliament* 30. 13. the King may grant to a man to be an Escheator for life, notwithstanding that Statute.

To answer the Statute which has been cited, which the King cannot dispense with: I say, as to the Statutes of *Simony* and *Ufury*, the King cannot dispense with them; but what is that to the matter in hand? For there is no reflection of the Subjects service, but the King may have the benefit notwithstanding. Then as to the Statute 5 *Ed. VI.* 16. against buying and selling of judicial offices, of which Statute, there is a clause in the 1st *Article*. 134. that the King may not dispense with that Statute: There is a difference between that Statute and that for that doth enact, that if any person shall bargain and sell any office, *Uf.* shall forfeit the office, *Uf.* and all such bargains and contracts shall be void; and that he that shall give any sum of money, *Uf.* for any such office, *Uf.* shall be a disabled person in Law, to have, occupy, or enjoy the said office, *Uf.*

Now the Statute doth disable the party upon doing such an act, to take the office; for the making the bargain is prior to taking the office, and thereby he is disabled to take it, so that he can never have the office legally vested in him, if the King cannot dispense with a conditional subsequent, and if that does not come near this. And for this reason I humbly pray Judgment for the Defendant.

Then the Lord Chief-Justice Herbert says that:

Chief-Justice. THIS is a case of great consequence, but as of little difficulty is ever any case was, that raised so great an expectation, for if the King cannot dispense with this Statute, he cannot dispense with any *Penal Law* whatsoever.

As to the first point, whether the King be admitted to plead this dispensation, and pardon to this action, *Uf.* (having not pleaded it to the indictment) I think it may be; for the Court shall not be bound by the finding of the Jury below, for (if for any thing that does appear) did plead it there, and the Jury might have gone against the direction of the Court, yet that shall not conclude us; but if the party has good matter to discharge himself, we may then as: as if a man be convicted of an assault and battery against the Defendant, the Plaintiff may give the former conviction in evidence, but yet he must also prove the battery, or else he shall not recover.

And this being an *affirmative*, it shall not bind, because the Plaintiff was not put to the trial first.

As to the second point, whether the King can dispense with the Act or no, I think it a question of little difficulty. There is no Law whatsoever may be dispensed with by the Supreme Law-giver; as the Laws of God may be dispensed with by God himself; as it appears by God's command to *Abraham*, to offer up his son *Isaac*: So likewise the Law of Man may be dispensed with by the Legislature, for a Law may either be too wide or too narrow, and there may be many cases which may be out of the conveniences which did induce the Law to be made; for it is impossible for the which Law-maker to foresee all the cases that may be, or are to be remedied, and therefore there must be a power reserved, able to dispense with these Laws. But as to the case of *Simony*, that is objected by the other side, that it against the Law of God, and a special offence, and therefore makes in *Uf.* which I do agree the King cannot dispense with. And as to the cases of *Ufury* and Non-Residence, those cases do come under that rule, that the King cannot dispense with them, because the subject has a benefit by them; for in case of *Ufury* the Bond is made void by the Statute, and therefore if the King should dispense with it, the subject would lose the benefit of the avoiding the Bond. And as to the cases of buying and selling of offices, they are objected, there is no need of refusing, whether the King could dispense with that Statute or no, because the party was disabled to take any such office by the contract, and

* See *Chief-Justice's Reports*, page 11. if *Uf.* where this Case is largely reported.

† *Richard* *Baron*, in his History of the case of *Thomas*, *First* *Baron*, *Edwards* *Baron*, a Gentleman of a noble Family in Kent, desired himself a Papist, that he had long designed to be, and had come to that resolution, that he would from thence forth, there was no need to be given him any more of his office, where the Church the law-giver was concerned. He had an Employment, and not taking the *Tith*, his conscience was set up to inform against him, and to deliver the *200* *l.* to the Church the law-giver. When this was to be brought to trial, the Judges were divided about these opinions; and such as were not clear to judge as the Court did stand, were there were two (and some to a third). The Bar went in a solemn proclamation, and in *Twenty-Two* Judges were given.

And in page 471. the *Baron* says, But Judges, who are before-hand determined how to give their opinions, will not be much moved, even by the strongest arguments. The *Barons* once said on this occasion at the Bar, were rather a little firm for a week-end in a Trial, here with what arguments the Judges would maintain the Judgment that they should give; but they made nothing of it: and without any arguing gave Judgment for the Defendant, as if it had been as a Case of course.

the disability was attacked by force before the office was vested, so that the King could not remove the disability, and therefore it is to be said, that if it had been in this case, if the Defendant had by his neglect or refusal to take the oath, rendered himself incapable before he had taken the King's dispensation; for the King's dispensation coming before the disability attacked, it does prevent it.

The case of the Sheriff is much a stronger case than this, and comes up to it in every particular, for that Statute doth disable the party to take, and the King to grant; and there is also a clause in that Statute, which says, that the Patent shall be void, notwithstanding any assent to the contrary; and there is a penalty of 100 *l.* like to our Case; and yet by the Opinion of all the Judges of England, the King has a Power of dispensing with that Statute; yet that Statute does expressly say, the King shall not dispense with it by a non assensu: so if an Act of Parliament had a clause in it that it should never be repealed, yet without that clause, the same Power that made it, may repeal it. Besides, that Statute makes the Patents void at the time of granting them; but by that Statute the Patents are good at the time of granting them, and continue so 'till the next assent to take the oath, for during of which the Patents bear three months time. And if the case of the Sheriff be Law, as it hath been taken ever since *Hos. Vill.* the contrary, and is cited for good law in many of our books, and never till now questioned; for the common course and experience have been according to it, then I defy all the world to show me any material difference between that and this, only that this is the stronger case of the two, in many particulars. But because the case has been denied by the Plaintiff's Counsel, it does concern us to take the opinion of our Brethren, it being a matter of so great consequence in the Clergy for if it be not law, then there are some Sheriffs that be not lawful, and so have not power to return the Jurors, and then we have no power to try and give Judgment upon any offenders; and it also concerns us who put into our country, to take advice of it: for if that case is not law, our gentlemen, which are an assent to the 23 *H. VIII.* 24, may not be good, and so we have no authority to go the Circuit; and therefore I will ask the opinion of all the Judges, as well in this case as this.*

On Monday the 21st of *June*, after having consulted with all the Judges, his Lordship delivered their Opinions in open Court, thus:

1. In the Case of *Galvins* and *Hells*, wherein the defendant pleads a dispensation from the King; it is debated, whether or no the King had such a Prerogative? Truly, upon the argument before us, it appeared as clear a Case as ever came before this Court. But because men fancy I know not what difficulty, when really there is none, we were willing to give so much countenance to the Question in the Case, as to take the advice of all the Judges of England. They were all assembled at *St. James's*, and this case was put to them; and the great case of the Sheriffs was put, whether the dispensation in that case were legal? Because upon that depended the execution of all the Law of the Nation: And I must tell you, that there were ten upon the place, that clearly delivered their opinions, That the Case of the Sheriffs was good Law; and that that all the Attorneys grounded upon Indictments found by Juries returned by such Sheriffs, were good, and not erroneous; and consequently that men need not have any fears or scruples about that matter. And in the next place, they did clearly declare, that there was no imaginable difference between that Case and this; unless it were, that this were the much clearer Case of the two, and liable to the fewer exceptions.

My Brother *Poult* said, he was inclin'd to be of the same opinion; but he would rather have some more time to consider of it: But he has since sent by my Brother *Hallway*, to let us know, that he does concur with us. To the eleven Judges, there was one Dissenter, Brother *Strait*; who yet continued his dissent, and said, that the King cannot dispense in this Case: But that's the opinion of one single Judge, against the opinion of eleven. We were furnish'd in our Judgment before, and having the concurrence of eleven out of twelve, we think we may very well declare the opinion of the Court to be, that the King may dispense in this Case: And the Judges go upon their grounds;

1. That the Kings of England are sovereign Princes.
2. That the laws of England are the King's laws.
3. That therefore 'tis an inseparable Prerogative in the Kings of England, to dispense with penal Laws in particular Cases, and upon particular necessary Reasons.
4. That of their reasons and those necessities, the King himself is sole Judge: And then, which is consequent upon all,
5. That this is not a trust invest'd in, or granted to the King by the People, but the ancient remains of the sovereign Power and Prerogative of the Kings of England; which ever yet was taken from them, nor can be. And therefore such a Dispensation appearing upon Record to come in time enough to save him from the forfeiture, Judgment ought to be given for the Defendant &c.

And *perpetuo* et *capite* per *hollum*.

This Judgment making a great noise, the Lord Chief-Justice, in judgment of his opinion, published the following Vindication.

A Short Account of the Authorities in Law, upon which Judgment was given in Sir Edward Hales's Case: Sheweth by Sir Edward Herbert, Chief-Justice of the Common-Plays, in vindication of himself.

HAVING been called to a place of Judicature in difficult times, and after my most sincere resolutions and uttermost endeavours of discharging the duty of that place, with a good conscience, having yet bad the

had fortune to fall under the greatest infamy and reproach that is possible for any man to lie under, of perjury and breach of trust; in giving a Judgment in Sir Edward Hale's Case, contrary to Law, and contrary to my knowledge and opinion (for that only can make it criminal); and which, they say, leads to the subversion of all our Laws, contrary to the oath that they judge takes, and to that high trust reposed in him, to judge to the best of his understanding, according to Law. Although I cannot help to me off that universal ill opinion that the malice of some people, who understand the nature of this Case very well, has made upon most men who do not understand it; yet in order to clear myself to all just and disinterested persons who are only my enemies by mistake, I think myself obliged to give some short account of that Judgment, and the grounds upon which it was given: and that I will do, not by making an elaborate and legal argument, to make out by reason of my own, that the Judgment then given is conformable to Law; which whether it be or no, is like to be confuted in Parliament, and to whose determination I shall as entirely and cheerfully submit, as any other person in the Nation. But I shall first show, not all the variety of Cases that we meet with in our Books, touching the King's power of dispensing with Acts of Parliament; for that would swell this Paper as an unreasonable length, and discompose many from reading any part of it; but only some few of the chiefest and plainest authorities in Law, upon which the resolution in the Case of Sir Edward Hale was grounded. I shall not only cite the Books and Pages where those Cases are to be found, but transcribe the very words, that every body may be convinced, that if we were in a mistake, it was no wilful mistake, but that we had the authority of former Judgments given by great men before us [and for which they were never questioned] to lead us into it.

The Case (for I must here it upon my memory, not having any Copy of the Record by me) was shortly this:

An ancient popular was brought against Sir Edward Hale, upon the Statute 5 Cal. II. c. 2. for the penalty of good, wherein the Plaintiff declares, that whereas it was provided by the Statute, &c. (setting forth the Statute): Notwithstanding which, the Defendant having a commission to serve the King as a Colonel of Foot, and not having received the Sacrament, nor taken the oaths and tests, &c. within the times prescribed by the Act, and after the times expired wherein he ought to have received the Sacrament, and taken the oaths and tests as aforesaid, he did execute the said Office, and continued to act by colour of the said commission; of which he was indicted and convicted at the Assizes in Kent, &c. whereby the action accrues to the Plaintiff for the penalty of good. The Defendant pleads, that before the time expired, &c. he had a dispensation under the great seal to act, non est tunc Statute.

To which the Plaintiff demurs.

And Judgment was given for the Defendant, that his Plea was good.

And first, it will be necessary to know what this dispensing Power is, which is warranted by our Judgment, and that will best appear by the definition of it, which is in the 17th. cap. of the Statute 25 Hen. VI. c. 8. in the Case of Monmouth: *Dispensatio non prohibet de jure. De iure Regi concessio prestat impunitatem preiudicium de iure particularibus: et dispensatio de iure prohibet preiudicium de iure particularibus.* For true it is (says the Book) that in as much as an Act of Parliament, which generally prohibits any thing upon a penalty that is popular, or only given to the King, may be incommode to divers particular persons, in respect of persons, time, or place; for this purpose the Law gives a power to the King to dispense with particular persons.

And in the 17th. cap. 63. in the Case of good Statutes, which was the opinion of all the Judges of England, a *Nullum*, it is related, that the King may dispense with any particular person, that he shall not incur the penalty of the Statute, but it be an Act made pro bona publico, and that this is a truth and confidence infamously ascribed to the royal person of the King. I cite these two first cases, chiefly to shew, that a Dispensation as its nature is particular, and given to particular persons by name; which is all the power that is attributed to the King by our Judgment. And this I mention, because of an unprofitable mistake of most People that talk of the dispensing Power, as though the King's declaration of Liberty of Conscience, whereby all the Laws that concern Religion are at once totally suspended and laid asleep, were warranted by it. Let that declaration stand or fall upon its own bottom, I am from the Case I am now speaking of, far from being able to do so. And having by these Cases cleared the nature of all dispensations, which are always granted to particular persons (as Sir Edward Hale's was in our Case, who was the first, and I think the only, person who then had such a Dispensation), I shall now cite some of the chief authorities upon which our Judgment was given in that case: And the first and greatest case that I cite, wherein the King's dispensing Power is defined and limited, is in the Year-book of Hen. VII. fol. 11. of H. VII. fol. 12. in these words: "There is a diversity (says the Book) between *maius prohibetio* and *minus*, as is a Statute forbids any man to coin money, and if he do so he shall be hanged; this is *maius prohibetio*; for before the Statute coining money was lawful, but now it is not so, and therefore the King can dispense with it. So if a man ship well in any place but Galley, it is *maius prohibetio*, because it is prohibited by Act of Parliament, and the King can dispense with it, and so in like cases: But that which is *minus* in the King, nor no other person can dispense with; as if the King would give a man power to kill another, or license one to make a nuisance in a highway, this were void; and yet the King can pardon these things when they are done." These are the very words of that Book, and my Lord Vaughan dissenting off, and explaining this case in the case of Thomas Sewall, in his Rep. p. 332. 3rd. Edit. here a Dispensation differs from a Pardon. For a Dispensation does not pardon, and makes the thing prohibited (no otherwise) lawful to be done by him that has it. And therefore the King cannot dispense with *maius* in his, because they never were, and never can be, made lawful: But even these (says the Year-book) may be pardoned after they are done.

From these Cases results this plain Syllogism: Wherever is not prohibited by the Law of God, but was lawful before any Act of Parliament was made to forbid it, the King, by his Dispensation, granted to a particular person, may make law again, so that person who has such Dispensation, though it continues unlawful to every body else.

But to execute any office without taking the oaths and the tests annexed to any Acts of Parliament made to forbid it, was lawful.

Therefore the Dispensation granted to Sir Edward Hale, did make it lawful for him to do so, though it contained unlawful for any body else.

In this argument the premises are not of our own, we derive them out of our law books; and the authority of those books have more than a count question, and appear to us as any indifferent person, whether it can be criminal in Judges, to draw a necessary conclusion from possible and book-cases that have been taken for Law for so many ages together.

The next great Case is the resolution of all the Judges of England, in 2 Hen. VII. in the Exchequer-Chamber, upon the King's Power of dispensing with the Statute of 25 Hen. VI. cap. 8. That no man should be Sheriff for above a year. The record in the preamble, and the words of the Statute, is contained under our Statute of 25 Car. II. cap. 2. as it is in every particular, and in some goes beyond it, for the words recited in our Law Statute are only in these words, *For preventing abuses which may happen from Ralph Rowlands, and yet it is the words of Sir Henry's great Statute.* The cause of making the Statute of 25 Hen. VI. to be for preventing the immoderate damage of the King and his People, perjury, manslaughter and great oppression. The Purview reads,

1. That no man shall be Sheriff for above a year.
2. That all Letters Patent made for above a year shall be void.
3. That no Non-obstante shall make above glad (which shews that the Parliament thought the King could otherwise have dispensed with this Act by a Non-obstante).

4. Where acts by colour of such Letters Patent shall forfeit goods.
5. He shall be attainted to bear the office of Sheriff in any County of England.

6. Every Person for such offence shall be void.

Notwithstanding all this, it was adjudged in that Case before cited by all the Judges of England, (who were at that time as learned as ever law upon the Bench); I say, it was adjudged by all the Judges in the Exchequer Chamber, that the King's Dispensation with that Statute was good.

Having then this Case before us, if we would have judged the Dispensation not good in Sir Edward Hale's Case, it must have been upon one of these two grounds: that is, either, 1. In the first place, we must have found some difference between the King's power in that case and in this, which I cannot, after the well-considered, does not appear to me, and I wish any man would shew us any such difference if he can; or else, 2. We must have adjudged that *maius prohibetio* given in the Exchequer-Chamber by all the Judges of England for long ago, and which has been taken for good Law ever since, we must adjudge no Law; whereas the known rule is, that after any point of Law has been solemnly settled in the Exchequer-chamber by all the Judges, we never suffer it to be disputed or drawn in question again.

But our enemies living the force of this argument, have had the confidence to say, that that point is not related in that case, &c. they might with as more difficulty affirm, *Then that we saw false things as they thought*, to be named of the Ten Commandments, we can only reply in our case as in that, that if we have eyes to read, and common sense to judge, we are there relieved. Included there is another point about the Sheriff's paying his accounts, which the Judges were divided in; but in the point of the dispensation they all agreed, or else, that other point could never have come in question.

But to put that beyond all controversy, we have two things to offer.

First, That it has been cited as adjudged in several books of great authority.

Secondly, It has been the constant practice to have such dispensations in all times for ever since that resolution.

As to the first, though I might cite many books, yet I will only cite three or four of the chiefest and greatest authorities; and the first shall be Fitzherbert, in his abridgement of this very case, *Tit. Grant. 33.* who lived near this time, and could not easily be mistaken in the sense of the Year-book: The Patent, says he, was given to a Sheriff by the Justice; but the Statute says expressly, it shall be void, therefore it is only made good by the King's dispensing.

2. Next to him shall be Plowden, who, as all Lawyers will certify, is as little like to be mistaken in the sense of the Year-book, as any Reader we have; and he, in his Commentaries, p. 502. in the title between a Grandee and the Bishop of Lincoln, after citing the case both out of Year-book, and out of Fitzherbert's abridgement, has these very words where the Statute was, *That the King's grant to any man to be Sheriff of any County for longer time than a year shall be void, notwithstanding any clause of non-obstante to be put into the patent: There it is held, that the King's grant to the Earl of Northumberland, to be Sheriff during life was but a clause of Non-obstante, because of the phrase words of the Statute before-mentioned; and such clause of Non-obstante, the first to the Earl was good.*

3. Next is my Lord Coke, who asserts the King's prerogative to be void; but his terms are not his own terms, as we could guess to do, in giving Judgment in Sir Edward Hale's case: For in his seventh report, page 215, he says these words: "No Act can bind the King from this prerogative, which is sole and inseparable to his person, but that he may dispense with it by a *Non-obstante*, as a sovereign power to contraind any other subjects to serve him for the publick weal, and this is fully and inflexibly annexed to his person, and his royal power cannot be refused." 4. by any Act of Parliament, neither in *Tyot not in Hephobol*, but that the King by his royal Prerogative may dispense with it: For upon the Commandment of the King, and Obedience of the subject, does his Government consist, as is provided by the Statute of 25 Hen. VI. cap. 8. That all Patents made or to be made of any office of Sheriff, &c. for term of years, for life, in his Majesty or his heirs, are void and of no effect; fully, any clause or parcel of non-obstante, put or to be put into such patents to be made notwithstanding. And further, whosoever shall take upon him or them, to accept or occupy such office of Sheriff, by virtue of such grants or patents, shall stand perpetually disabled to be or bear the office of Sheriff within any County of England, by the same authority. And notwithstanding that by this Act, *First*, The Patent is made void. Secondly, I believe is refrained to grant any *Non-obstante*. *Thirdly*, The grantee disabled to take the office: yet the King by his royal prerogative (power of contraind) may command by his subjects, that he will in his wisdom deem think meet and profitable for himself and his

we have not always so much light to guide us, as we thought we had in this case. We often meet with cases of this kind, and very ill fitted by former judgments, where we are forced to dig truth out of the mire, to compare and distinguish, to discern and sift, and gather the seeds of the Law out of the confusion of disagreement, and very often contradictory arguments, as well as we can. And after all our labour and our pains, we appear to be in darkness, it was never yet supposed as a crime. The Judge is content if in a way of error, not only without any accusation, but without the least reflection upon him that gave it. Nor can a mistake in judgments be so criminal in a matter of a greater concernment, than it is in matters of the least consequence: It would be very mischievous and very dangerous, if it should. For if in questions of Privilege, any mistake shall be made, especially on the one hand, when Judgment is given for the King, who succeeding Princes may not be as angry at any mistakes on the other hand, I cannot imagine. And when once affairs are come to this pass, there will be great encouragement for any man, that pleads his own fault in a way of error, to undertake that very next day, to make his own fault his duty, without it, to undertake that very next day, but very dangerous, and very mischievous employment, a great freedom to give Judgment according to their opinion and their confidence, and great relief upon the relations of those, who know they shall be sure to go with their lives and fortunes for any mistake of theirs, either to the King or the People, as either of them shall happen to get the upper hand. For my own part, I thank God, I can lay this two things: I will, that for this time past together, wherein (with very little remission) I have sat as a Judge in several Courts, though I may be justly accused of many mistakes and misdeeds, yet I have never given Judgment in any one Case against the clear dictates of my reason and my conscience. And the second thing is, that I never gave Judgment in any controverted Point, wherein I had a doubt, and so great authorities to warrant it, as I have to warrant that Judgment which was given in *Sir Edward Hales's Case*. And this I say, not to set up that opinion again in a Pamphlet, which was so ill advised in a Court of Justice, nor to oppose my Sense to the Judgment of the Nation; for I think it is very fit that this dark Learning (as my Lord *Playfair* calls it) of *Dyspepsia*, should receive some light from a determination at Parliament, that Judges for the time to come, may judge by more certain Rules, which Acts of Parliament the King may, and which he may not dispute with, but I have said these authorities at this time in my own defence, and for these particular purposes; in the first place, to show,

1. That we are not the first inventors of this dispensing Power, but that it has been allowed without controversy, to the Kings of England in all ages, that they might dispense with many Acts of Parliament.

2. That if our Judgment was erroneous, and that the King could not dispense with that Act of Parliament, yet that error was but an error in that single Case, and had no such large and mischievous consequences as is pretended. For this, because we judge that the King could dispense with that Statute, for others to conclude from thence, that therefore he has a Power to dispense with all other Statutes, especially such as concern, or well in any of the subjects any manner of interest whatsoever, in their lives, liberties, or estates; or that, because the King may dispense with a penal Law, wherein a disability is annexed to the breach of it as a penalty, and that penalty not to be secured before a legal conviction, and where the King's dispensation makes the thing dispensed with lawful, and consequently prevents any conviction or penalty at all: For others to conclude from thence, that therefore the King may dispense with such Statutes, where a precedent disability is actually laid upon any man, as there is upon the Members of both Houses, till they have been the one and with privilege; and therefore without question, is not in the King's power to dispense. I say, these are consequences which may flow from the heated imaginations of angry men, but have no warrant or foundation at all from the Judgment given by us.

I have one thing more to say in my justification, which is, that if I have been guilty of so heinous offences as I am accused of, where is the temptation or reward? If it was to keep in my Judge's place, which otherwise I might have lost, I can only answer, That if that were the case, I then became the worst man in the world, only to keep that, which it is pretty well known, I was with much difficulty, with the persecution of my friends, prevailed with to accept; and for any other reward, whereof I am acquainted with the circumstances of my fortune, will, I am confident, notwithstanding the false and idle reports, of I know not what great reversions lately fallen to me, as easily acquit me of having been corrupted by the King, to give a pernicious Judgment in this Case, as of having stung myself by taking bribes in cases between party and party.

All that I have to add more, is, that howsoever that I have lost in my defence may happen to be understood at present, yet I could not deny myself the satisfaction of having put in a Plea of Innocence at least, that whatsoever shall happen to me now, may perhaps meet with a more equal Judgment, as afterwards; for as I ought to be much less usually to me to lose my life, if any body be very fond of taking it, than to let the allegations that are every day cast upon me, to pass in silence, or suffer myself to be transmitted to posterity under the character of a hypocrite of my Religion, or a subverter of the laws and liberties of my country.

Sir Robert Atkins, at the End of his Enquiry into the Power of dispensing with Penal Statutes, reads the following short Argument upon the Pleadings of the after-mentioned Case of Sir Edward Hales.

THIS is the Point argued by the Plaintiff's Counsel, which it appears by the Declaration, and it is now confuted by the Defendant's joining demurrer, that the Defendant had been indicted for this offence, in exercising the Office of a Colonel without having taken the Oath.

And upon the Indictment he either did plead this Dispensation, or might have pleaded it. And he is now convicted, according to the direction of the Act of 25 Car. II. in that he now comes too late to plead it to this Action: For he cannot falsify the conviction, nor aver any thing against the Record of it, and bring the fact to be tried over again in this Action; but is

concluded and estopped in Law to say any thing to the contrary of that Record, by which he is found guilty of the offence against this Act of Parliament.

The Defendant either did plead this Dispensation or Pardon to the indictment, in discharge of the indictment, and it hath been over-ruled by the Judges at the Assizes (as by Law it ought to be, being no good Plea): Or he might have pleaded it, if he had been advised at that time a good Plea. And not having done it, he had elapsed his time, and now comes too late to plead it, being convicted of the crime.

To this was objected (as I have) that the Plaintiff, if he will take the advantage of an Estoppel, ought to have in force by way of replication to the Defendant's Plea, and so have relied upon it.

For the Rule is, That he that pleads an Estoppel, must rely upon it as an Estoppel.

It is true, if a man will plead an Estoppel, he must rely upon it. But in this Case the Plaintiff does not plead the Estoppel, but the Estoppel appears by the Declaration, and the Defendant's own Plea together: So that there was no need for the Plaintiff so far that forth by way of replication, which doth sufficiently appear by the Defendant's own Plea, now. That he did not take the Oath within the time limited by the Act, and the conviction is concluded by his Plea, and joining in demurrer.

If a man recover a debt upon a bond, and before execution dies, if his Executor file a *Scire facias* upon that judgment, the Defendant cannot plead any Plea that he might have pleaded before, as *non est factum*, or by *Writ of Error*, or the like, for he is concluded by the Judgment.

In *John and Jane's Case*, in *Styler's Rep.* fol. 43, by *Styler*, Chief Justice, a man shall never rely limited by *Styler's Rep.* (that) that is an equitable suit at Law for any matter that he might have pleaded before.

There is no Estoppel in this Case, for the Conviction is upon an Indictment, which is the King's suit: and this is the fact of another, viz. the new Plaintiff, and so they are two distinct facts.

The conviction upon the Indictment is an Estoppel against the Defendant himself, of which any man may take the advantage, and he himself shall never be admitted to aver against it: As in *Mogge's Case*, in *Lesser's* first part, fol. 3.

An attorney for treason is an universal Estoppel, of which any stranger may take the advantage, not only against the Party accused, but against his wife too, if he sue for dower. And it does not run in privacy: *Ily Adams*, 68 Bar.

Where a man is attainted by his own confession of a felony, a stranger is not estopped to say he was not guilty: But if a man confess felony, and after enjoin 7. S. of his land; and after A. is attainted of this felony by verdict, then 7. S. is estopped, and may not aver that A. was not guilty, because he claims under him: much less shall A. himself aver against the verdict, that he is not guilty.

If a man be accused of felony, all the World, says *Grevill*, in *Anthony Rep.* 8. is estopped to say the contrary 3. As also *serje*, if he be convicted, by the same reason 5.

As to that which is objected, that the conviction is upon an Indictment (which is the King's suit); but this is another fault, and therefore the verdict shall not conclude the Defendant in this fact:

This is not another fact, but in effect an execution upon the conviction, and grounded upon that Record, and therefore not merely a new fact, but a dependent action; as a Writ of error, or an *addes Superiorem*, or a *Scire Facias* upon a Record, or dependent facts, or an action of debt upon a Judgment.

By the Act of 25 Car. II. c. 2. hath made it criminal in any person, after his neglect of taking the two Oaths, or of the Statute, by the time limited, to execute any fact or office of trust; and for such offences hath made him voidable as the Assizes: and upon a conviction the offender incurs [among other penalties] the forfeiture of good, and gives it to any one that will sue for it as an action of debt.

So the Statute hath decreed the method of trying the offender, and of convicting the offender, by Indictment as the Assizes.

And if he that sues for the forfeiture shall be driven to prove the offence over again, then the conviction at the Assizes serves for nothing, but was all in vain. And such contrivance denotes the intention of the Law-makers, for they intended this for the only trial, and not to have several trials: For suppose it should be used again in this action, and a verdict pass for the Defendant, there shall be trial again trial, and verdict against verdict: and such contradictions ought to be made of Acts of Parliament, as may not elude, but agree with the intent of the Law-makers; and so as that no words, clause or sentence, shall be altogether idle and insignificant.

And this conviction upon the Indictment is the very ground of the Action of debt brought by the new Plaintiff, for the words of the Act are, And *henceforth lawfully convicted upon any indictment, every such person shall forfeit all his goods and chattels* 300 l.

So that all there be such a conviction, there is no forfeiture incurred of 300 l. nor so often can be brought for the 300 l. The offence must be proved and determined before any action can be brought; and therefore the proof of the offence, whereof the Defendant is convicted, must not be made in this action over again: if it must, what serves the conviction for?

Suppose the Plaintiff here had brought this action, after the neglect of the Defendant of taking the Oath, and of receiving the Sacrament, and his neglect in his office after such neglects, and before any conviction upon Indictment, and had only aver'd, that the Defendant had been neglected, and yet aver'd, would this action have then been brought? Or, suppose there had been a conviction, but the Plaintiff had not let it forth in his declaration, but had only aver'd the offence committed, would then have been a good declaration? Surely it would not. This proves that the Record of the conviction is the very ground and foundation of this action, and the action would not lie without such conviction; so that it is not a mere new action, but a dependent action.

And the usual difference is where the action is a dependent action, depending upon a Record, and grounded upon it, and where it is a collateral fact, not depending upon that Record.

* 7 E. 2. s. 1. *Estoppel* 142.

† *Keil and Mogge's case*, *Widd Kohls* 228. by Chief Justice *Styler*.

‡ *Ad. Adv. 1st Part*, 368. § *Dr. and Stud. Ch. 2. ad fin. 10. 11.*

An *Admonition* against the Sheriff for a *sequestrum* of one taken in execution; this is a dependent *Admonition*, and is grounded upon the Record of the Judgment given against the party that *sequestrum*. The Sheriff cannot aver any thing against that Record, and examine it over again; nor can he take any advantage of error, or erroneous proceeding, in obtaining that Judgment. *Sawmiller's Rep.* 2. part. 108.

So is an *Admonition* of debt grounded upon a Judgment, or in an *Admonition* *quæritur*, to be relieved upon a Judgment.

And in our Case, this *Admonition* of debt for the *scot*, is grounded upon the conviction; which must stand for truth as long as it remains in force, and not avoided by error or attempt. A writ of Error to reverse a Judgment, is a dependent *Admonition*: In error, the Plaintiff may not aver any thing against the Record. *Admonition servat* *Widdell, Style's* 18 part. 94. Error was found in the King's Bench to reverse a Judgment given in the *Palace Court*: And the Plaintiff in error alleged for error, that the Duke of *Gloucester* (who is principal Judge of that Court by Patent) was not there. It was agreed by the Court, that it might not be alleged for error; for it was contrary to the Record.

But for *Car.* in an *Admonition* of trespass, or false imprisonment, which, (says that Report) are collateral *Admonitions*, may be safely and safely that, it be taken upon the Judgment.

So if a man be indicted and convicted of an assault and battery, and afterwards the person so assaulted brings his *Admonition* for the battery, this hath no dependence upon the Indictment or Conviction, for it may be found, that there were no Indictment, but is a distinct and collateral fact. The Indictment and Verdict is no *estoppel*, nor can so much as be given in evidence: as is held by the whole Court, in the Case of *Samuel versus Yerdelly*, and *Tobell*, 20 *Car.* II. B. R. *Kelly's* 2. part. 384. The like in an appeal of murder, *Kelly's* 2. part. 229.

Another ground upon the *offender* against this Statute of 25 *Car.* II. is, that he shall be obliged to sue in any *Admonition*. Now suppose a person convicted at the Assizes, faces an *Admonition*, may not the Defendant in that *Admonition* take the advantage of that disability, and plead the conviction? As in case of an Outlawry pleaded in disability there need not be set forth all the proceedings in that suit wherein the Plaintiff was outlawed, but he may plead the record of the Outlawry and rely upon it; and it shall not be examined whether there was any just cause to sue him to the Outlawry, or not.

The Indictment, the Defendant's Plea to it, and the Verdict upon it, have determined the matter of fact, that the Defendant is guilty of the offence against this Act of Parliament.

The Act itself has pronounced the Judgment, which consists of many particulars, one whereof is, that the Defendant shall forfeit *scot*, to him that will sue for it, and the action of debt for the *scot*, brought by the Plaintiff, grounded upon all these, is in the nature of an execution.

And all these put together, are not several and distinct suits, but in effect all but one suit and process, end depending upon the other.

The second Point is, Whether the Disposition pleaded by the Defendant be a good bar to the Action of debt? And this is properly called, The great Point of the Case:

For which the Reader is referred to Sir Robert Atkyn's Large Pamphlet, of The Enquiry into the Power of dispensing with Penal Statutes.

Two Sir Robert adds a Postscript: Being some Animadversions upon a Book writ by Sir Edward Herbert, Lord-Chief-Justice of the Common-Pleas, entitled, A Short Account of the Authorities in Law, upon which Judgment was given in Sir Edward Hele's Case.

[After a short Apology for making some Animadversions upon the said Book, he proceeds thus:]

THE Chief-Justice Herbert, says pag. 67. gives us the definition of a *dispensation* out of Sir Edward Hele's 12th Rep. fol. 88. viz. *Dispensatio modo prohibita est de jure Domini Regis concessa, propter inopiam rationis privationem de consuetudine particularium.*

And again, *Dispensatio est mali prohibiti provide relaxatio utilitate civi-
necessitate concessa.*

Upon the word *Genus*, I would gladly be satisfied, when, or by whom that Power was ever granted to the King; where had we find that Grant? It is clear, that whoever hath the true power of making a Law, may justly dispense with that Law. And therefore Almighty God, being the sole and supreme Law-giver, might dispense even with the moral Law; as he did with the sixth Commandment, when he commanded *Abraham* to sacrifice his son *Isaac*; and with the eighth Commandment, when he commanded the *Israelites* to borrow the jewels of the Egyptians, and to go away without restoring of these.

But it stands not with reason, that he who hath but a share with others in making of a Law, (as the King hath no more) should have the power, by himself alone to dispense with the Law, unless that power was expressly intrusted with him by the rest of the Law-makers; as power is hath been done.

Sir Edward Coke, in his 7th Rep. in the case of Penal Statutes, fol. 36. towards the lower end, does affirm, that this dispensing Power is committed to the King, by all his subjects. So that it is not claimed *Jure Divino*, but by grant from the People. But where in any such Grant we know not.

I have, as I conceive, made it appear in my larger argument, p. 14. that the first mention of Dispensation with Laws, began with the Pope, about the time of *Herbert* III. and by our King *Henry VIII.* on occasion, and by encouragement from the Pope, is that it was not by the Grant of the People, but over exclamation against by all good men, and generally by all the People; and ever fervent against by a multitude of Acts of Parliament.

It is true, the dispensing with laws hath ever since been practised; and they began at first here in England to be used only in Cases where the King alone was concerned, in Statutes made for his own profit, wherein he might have done what he pleased. But it is but of later times that they have been stretched to Cases that concern the whole Realm. See my Argument, fol. 13. Hence it evidently appears, it cannot be a legal power given to the King; for that must ever be by prescription, and refrained to those cases that have been used time immemorial, and must not be extended to new cases.

* *Jefferies versus Coler.* And *Dr. Druys* Case, 1 R. 140. And *Mackay's* Case, 6 R. 46.

Now there hath been no such usage as will warrant the dispensing with such an Act of Parliament as is now before us, that of 25 *Car.* II. c. 2.

The Chief-Justice Herbert, from the definition before recited, and these two authorities of Sir Edward Coke, in his Case of *Monopolies*, and that other of penal Statutes, frames an argument to prove, that the Dispensation granted to Sir Edward Hele, was good in Law.

Because a Dispensation is properly and only in case of a *Male Prohibitum*; he thence infers, that the King can dispense in all cases of *male prohibitum*.

Which is a wrong inference, and that which Logicians call, *Fallacia à dicto, quod est ad dictum simpliciter*. Because he can dispense with laws, that therefore he can dispense with all, is no good consequence.

It appears by the late Chief-Justice Vaughan's Reports, in the Case of *Thomas and Sarrel*, (who is often cited by the Chief-Justice Herbert) Vaughan's Rep. fol. 339. the fourth Paragraph, that his opinion is, that the King cannot dispense with every *Male Prohibitum*; and he gives many instances of such *Male Prohibitum* that are not dispensable, fol. 342, and 354. *parag.* 4.

Therefore the Lord-Chief-Justice Herbert should, as I conceive, regularly first have given us the definition of *Male Prohibitum*, 250 such as are dispensable, and four as are not dispensable; and thus have shown, that the Dispensation granted to Sir Edward Hele, fell under the first part; But that learned Reporter, the Chief-Justice Vaughan (so often cited by our now Lord-Chief-Justice) in the aforesaid case of *Thomas and Sarrel*, fol. 352. the last Paragraph *infra* *en*, quereis with the very definition of *Male Prohibitum*, and *Male in se*, and says it is confounding.

From whence I would observe, and from the whole Report in *Thomas and Sarrel's* case, that the notion of dispensation is as yet but crude and undigested, and not fully shaped and formed by the Judges.

The Pope was the Inventor of it, our Kings have borrowed it from them; and the Judges from time to time have refined and distilled it up, and given it countenance. And it is still upon the growth and encreasing, till it hath almost subverted all Law, and made the royal power absolute, if not diffuse.

I must agree, that our Books of late have run much upon a diffinition, viz. Where the breach of a penal Statute is to the particular damage of any person, for which such person may have his *Admonition* against the breaker of that law; there, tho' it be but *Male Prohibitum*, yet the King cannot dispense with that penal Law, according to the rule in *Brooke's*:

Res non patitur gratum fore cum respectu à domo alterius.

For instance, these are several Statutes that prohibit one man from maintaining another's suit, though in a just cause. See *Prædict de pace Regni*, in his *chap. of Misnomers*, fol. 59.

Now it is held that the King cannot dispense with those Laws, because it would be to the prejudice and damage of that particular person, against whom the suit is so maintained by another; for there can be no maintenance, but it is to the wrong of a particular person.

So of carrying a distress out of the Hundred.

But there are many other penal laws, where, by the transgressing of them, no subject can have any particular damage, and therefore no particular *Admonition* for the breach of them.

As upon the Statute that prohibits the transgression of wood, under a penalty. By the breach of this Law, that is, by the exportation of wood, no one particular man hath any damage, more than every other man hath, but it is only against the publick good.

And the breach of such a penal law is possible only at the King's suit, by Indictment or presentment.

And the like where such a penal Statute gives an *Admonition* popular, to him that will sue for the penalty, who hath no right to it more than another, till his suit be commenced.

In these cases, it is commonly held, that the King may dispense with such penal Statutes, as to some particular persons, and for some limited time, (whereof they make the King the sole Judge) because, as the reason is given in the Chief-Justice Vaughan's Reports, fol. 344. *parag.* 2. such offence wrongs none but the King. This is now the common received opinion and diffinition. And the breach of such kind of Statutes, are said to be only the King's damage as his publick capacity, as *supra* *per Governor*, and wronging none but himself. Lord *Pauley* Rep. fol. 342. *parag.* 3.

But if we will narrowly search into this diffinition, and weigh the reason for given, we shall find it is without any just ground.

The damage done to the particular person in the Cases *post*, is the first part of this diffinition, are merely his own proper and peculiar damage; and he is intitled to his particular action for it, in his own proper personal right; and therefore if he discharge and dispense with them, it is as wrong to any other man: he may do what he will with his own.

But the Cases in the second part of this diffinition, are where the King hath a right to the suit, and the offence and damage are said to be to him only.

But are they (as the former) in his own personal right, as his *Locum* or *officium*, it seems easy to say are they to him but as a subject for the Publick, for which reason he is called *Creditor Publicus*? And may he therefore, upon the like reason dispense with them, or dispense of them, as a subject may do with his own particular interests?

Again, shall a publick damage and injury to the whole Nation, be more dispensable by the King, than the loss of one privilege man?

—fall *Re* *Legislatio* *quædam*
Publica *generis* *severitate*—

And therefore, in my apprehension, the King cannot, in such cases of Dispensation, be truly said to wrong none but himself, and it is not agreeable to the definition before given, *Uniusus Compensator*, for the King wrongs the whole Realm by it. Whom if he grants a dispensation with a Penal Law of the first sort of this diffinition, his only wrong is one particular person.

The cases and authorities for dispensations in our Books that were granted in ancient times, will generally be found to be only where the Penal Statutes were made for the King's own proper interest and benefit at his discre-

King with the Statute of *Mortmain*. For in such cases it was to the King's own loss only, in cases where the King might by Law have given away by his order for uses. So the King may in his Point of grant of lands, dispense with the Statute, 1 Hen. IV. cap. 6. that requires there shall be mention of the true values of them. And by a new statute to those Statutes (which is now generally cited) the King hath in effect declared, that it is his pleasure to grant those lands, whatever the value of them be, more or less, and the Statute does by express words give a liberty to the King in that case.

The King is not a trafficker for others in such cases, nor can their dispensations be said to be chiefly to the damage of the Public. And such Penalties Lawfully imposed concern the King's own revenue or profit, may justly be thought to be intended, to be made only to put the King's matters into an ordinary method and course, and to save the King's labour, as the Lord *Hobart* says; and to prevent the King's being surpris'd or mis-inform'd, when Parliament is gain'd from him, and not design'd to tie the King's hands, or to restrain his power; as out of all doubt was done and intended by the Law-makers in our Act of 25 Ger. II.

But in all the late cases and authorities which we meet with in our Books concerning an *objection*, and dispensations, as in the time of King *Hen. VII.* and to downward to this day, we find them being usually upon such Penalties Statutes as merely concern the public good and benefit, and the Laws of such a nature, by the breach of which the whole Nation suffers: while some particular persons, it may be, by giving a large fine, or a yearly sum, obtain the favour to be dispensed with and exempt from a Penal Law, while all others continue to be bound by it.

As for example: where a Statute forbids the exportation of Wool, or of Cloth under or without it, under a penalty such a Law is greatly for the public good, and it takes care that our own people shall have employment and maintenance. Yet this is such a Law, as according to the mode of dispensation, the King may dispense with, there being no particular damage to one man more than to another, by breach of such a Law, although it be a mighty damage to the whole Nation: for by such a dispensation, the person so dispensed with to export such white Cloth uncoloured, will have the free trade, which before the making of that Penal Statute was equal and common to all. I wish the House of Commons would enquire what vast riches have been heretofore gotten by such as have obtained the dispensations with this Penal Statute, besides the sums they paid to the Crown for them. These are most *Monopolies*.

In such a case it is their duty to insist, that *the Law should stand by its Law*. It had been better for the Nation, that such Laws were never made, being no better observ'd: For later again the dispensation is neither *Children*, nor *Necessaries* permit.

Look into the case of *Tanner and Berril*, and you will find few or no cases of dispensations cited out of our Books, but of the time of King *Henry VIII.* and much more of very late times: so that the ill practice is still improving and spreading.

The Lord Chief-Justice *Hobart*, in the next place, page 618, proceeds to mention the true case of *Hen. VII.* a resolution of all the Judges in the *Exchequer-chamber*, upon the King's dispensing with the Statute of 23 Hen. VI. cap. 8. That *no man should be dispensed above one year*. This is the great leading case and authority, upon which the main stress is laid to justify the Judgment given in Sir *Edward Hales's* case.

I would avoid repeating what I have already so largely said to this authority, to which I must refer my Reader, by which I hope it is notwithstanding made out, that the King neither hath, nor ever had any just right or power to elect Sheriffs: but the right of electing was anciently and originally belonging to the Freeholders of the several Counties, and since it was unjustly taken from them as they have ever been on the losing hand, it hath been lodged in the great Officers of the Realm, as the Lord-Chancellor, Lord-Treasurer, Lord Privy-Seal, and the Judges, &c. as appears by the several Statutes.

And they are to make such choice every year in the *Exchequer*, on a day appointed by the Statute for that purpose. So that the Sheriffs are by these Statutes to continue in their offices for one year only, and the King cannot hinder such election.

Only by his Patent or Commission to the Sheriff, hath he used to signify to the Sheriff himself that he is chosen; and to publish to all others who the person is that is chosen. This is all the will of the Patent; but it is the proper election of those great Officers that truly vests them in their Office.

And it does as clearly appear, that when former Kings have dispensed with a Sheriff's continuing in his Office for longer than one year, contrary to the several Statutes for forbidding it, the King hath so done it by virtue (not of his prerogative, but) of a special Act of Parliament enabling him to do so, for some extraordinary occasions, and for some limited time only. See for this the Statute of 4 Hen. V. cap. 5. in the Statutes at large, and my larger argument, *fol. 37*.

The truth is, the power of dispensing is originally in the Legislators. He only can dispense with a Law, that can make a Law. The power is equal; and the Legislators can confer the same power upon the King or any others, for some convenient time, &c. as appears by the last institution of the Sheriff, and divers other like cases, mentioned in my foregoing argument, where I have also observed many other things upon that resolution of a *Hen. VII.* concerning Sheriffs.

The Chief-Justice *Hobart* supposes the mischiefs arising in the preamble of that Statute of 23 Hen. VI. cap. 8. concerning Sheriffs continuing in their offices longer than one year, to be equal, if not greater (as he judges) than the mischiefs recited in the Statute of 25 Ger. II. by *Popish* being in offices; and from thence, I presume, would infer, that the case of Sir *Edward Hales* is not so fatal in the consequence, as the case of a Sheriff.

I may appeal to any ordinary Judgment, and to the late experience and trial we have so lately had, and to the danger we were so lately in (from which Almighty God, by no less than a miracle, hath in great mercy delivered the Nation), whether the mischiefs that could any way possibly arise from the dispensing with the same (I mean the Statute concerning Sheriffs) be comparable to the mischiefs arising from putting *Popish* into office, and intrusting them with our Religion, and all our Civil Rights.

The Chief-Justice, upon these words of the Statute concerning Sher-

iffs, viz. That *as Noa offitantes shall make them good*, infers page 618. that those words do shew, that the Parliament which made that Act concerning Sheriffs, was of opinion, that had it not been for that clause, the King could otherwise have dispensed with that Act by a new statute.

Any. This is no more than a strained inference, and that it is very far from drawing any such opinion in that Parliament. It rather signifies, that had not the Parliament intended that clause into the Act, the King might have done again, as he had frequently practis'd before, viz. granted dispensation upon that Statute: which ill practice they endeavoured to prevent for the future, not approving the practice, nor owning the power of doing it. *Ex verbis mortuorum vivamus* again. A good Law rather condemns a customary practice before used.

I heartily desire my Reader (as I have done in my foregoing larger argument) candidly to observe and examine of what sort a man should have been, which the resolution of the case of a *Hen. VII.* urges to warrant that resolution; as those cases concerning the true value of lands, which the King grants; and that concerning the shipping of wool to a certain staple, &c. and let the Reader judge how vast a difference there is between those Statutes in the nature, and import, and reason of them, and this weighty important Statute now before us; and how little that resolution of a *Hen. VII.* can be warranted by the cases there cited, being of it inferior and quite a consideration, in comparison of the principal case.

It is true, Sir *Edward Coke* (in the twelfth Report which goes by his name, be truly say) hath given that resolution given in 2 Hen. VII. found out new and different reasons and arguments, which are not urged, and therefore I presume never so much as thought so, at that time by the Twelve Judges, who gave the resolution in his case of 2 Hen. VII.

Thus says Sir *Edward Coke*, in his relation of the Religion used in the west parts of the World: those of the Roman Religion made their greatness, wealth and honour, to be the very roll by which to gauge out the Canons of their Faith; and then did tell Clerks on work to devise arguments to maintain them.

Sir *Edward Coke* seems to justify that resolution concerning Sheriffs, from this ground, viz. That the King hath a *foreign power*, as command any *his subjects to serve him for the public weal*. And this is (says he) *fully and sufficiently consent to his power*, and that this royal power cannot be restrained by any Act of Parliament, 12 Rep. fol. 18.

I am to be no lessely amazed to the King's person, appears by the several Acts of Parliament, which I have cited to this purpose in my larger argument, *fol. 37*, viz. when the power of dispensing with *Popish* Statutes, was given to the King by the Parliament, and by him accepted for some short time. And the whole Parliament have in divers cases themselves exercis'd this very power.

Judge of the weight of the reasons said to be given them by Sir *Edward Coke*, by that one instance of his in the case he puts of purveyance, 12 Rep. fol. 19, which (he says) cannot be taken from the King, no, nor by Act of Parliament.

Yet we have lived to see it lately taken away by Act of Parliament; which is a just indignation of a Parliament (which is of the highest authority in Law) may therefore be taken from the King.

And is the King in truth restrain'd from commanding his subjects to serve him for the public weal, either by those Statutes that disable Sheriffs to continue in their offices longer than one year, or by our Statute of 25 Ger. II. that disables *Popish* Recusants to bear public offices: because these very *unlawful, unseemly, and dangerous* persons are disabled to bear offices of trust and power (and thus by the King's own consent to the Act, and by the advice of the great Council, the Parliament), and indeed of the whole Realm?

Does the King by this (which the Judges mis'd a restraint) want for choice of persons to serve in offices? Doubt the public weal suffers by this restraint: Is it not rather preserv'd by it? Hath not the King's Protestants subjects enough to bear offices? And are *Popish* Recusants (who account Protestants Heretics), and to be removed out and deliv'd up, and with whom they hold no faith, is to be kept, and against whom they have been continually plotting mischief? are these the fittest to be intrusted with the defence of the Protestant Religion, and with our Lives and Estates, which are all concern'd, more or less, in every public office and trust?

And are those persons (the *Popish*) that have a dependence upon the See of Rome, and a foreign power, fit to be intrusted with the power of the Nation, with the Militia, and the Sea-ports?

Is not this to commit the Lamb to the custody of the Wolf?

This Act that disables *Popish* to bear offices, cannot be justly said to be a restraint upon the King; that expression sounds ill, and takes the matter by the wrong branch. It rather imports the King's declaration and resolution, by advice of his great Council, to employ none in offices and places of trust, but such as are most capable and fit, and will most faithfully answer the great ends for which they are to be intrusted, that is, the preservation of the Protestant Religion, which is the true English Interest.

And this agrees with the rules of the Common Law, that if an office be granted to one that is *indiscreet*, the Grant is void, though granted by the King himself. Of this I have treated more largely in my argument, *fol. 37*.

The Lord Chief-Justice *Hobart*, page 619, asks the question, Whether to many solemn resolutions of all the Judges of England in the *Exchequer-chamber*, are not to be relied upon for Law? And I answer, that if they were ten times as many more, yet they are not to be relied on against many express public Acts of Parliament directly to the contrary. For what words could the Parliament use more emphatical, and express, and more weighty to the purpose, than by saying, that *no persons*, or a dispensation, or a Grant of such a thing (prohibited by that Law) shall be absolutely void, and *void facts* adjudg'd void, and the person made incapable to take? And is not a Judgment in Parliament, and by Act of Parliament, of the highest authority?

But (says the Chief-Justice, *fol. 619*.) the constant practice hath been to dispense with the Statute of Sheriffs. I answer, it hath also been a very frequent practice too for the King, to make such persons Sheriffs, as were none of the number nominated or chosen as aforesaid by the Chancellor, Treasurer, Judges, and other great Officers; and it passes for current that he may so do, though it be a vulgar error: for it hath been relieved by all the

Twelve

Twelve Judges, to be an error in the King. See *Sir Edward Coke's 2^d Inst.* or *Magnum Charta*, fol. 559. and yet it is practis'd to this very day.

The Chief-Justice, page 629. seems to excuse *Pay's* Recusants for not qualifying themselves for offices, by taking the oaths and the rest, &c. for that no man (such he) hath it in his power to change his opinion in Religion as he pleases, and therefore it is not their fault. It is an error of the mind, &c.

Ans. Here is no occasion taken to find fault with them for their opinion; let them keep their Religion still, if they like it so well, who hinder them. This Act of 25 Car. II. imposes no penalty upon them for their opinion; but is there any necessity of their being in offices? Must they needs be Guardians of the Protestant Religion? The penalty upon them by this Act, is not for their opinion, but for their presuming to undertake offices and trusts, for which they are by King and Parliament adjudge'd.

Page 630. The Chief-Justice Fagbush is brought in, arguing for the King's power of dispensing with (Nominal) nuisances (as he is pleas'd to call and distinguish nuisances). The word nominal, as there understood, imports, that though a Parliament declares any thing to be a nuisance, (as sometimes they do in Acts of Parliament, to order them indispensable) which yet in its proper nature would not otherwise be so censur'd to be; that such a nominal nuisance (as he holds) may however be dispens'd with by the King, though regularly by Law the King may not dispense with any nuisance.

Ans. Shall any singular or particular person, though a Chief-Justice, presume to call that a mere nominal nuisance, which a Parliament by a solemn Act and Law have adjudge'd and declared to be a real nuisance? Are we not all concluded by what a Law says? This arrogance is the mischief now complain'd of.

The Chief-Justice Herbert, page 630. says, that from the abuse of a thing, an argument cannot be drawn against the thing itself. I agree this is regularly true; yet we have an instance to the contrary in the Scripture, in that part of the *Brass Serpent*. But in our case the abuse doth arise from the very nature of the thing itself, from the constitution of it.

For the King practiseth no more in dispensing, than what their resolutions of the Judges allow him to do by this pretended prerogative. The error is the foundation.

They have made his power to be unlimited, either as to number of persons, or as to time, how long the dispensation shall continue. *Sir Edward Coke* says, and so the other Books, That the King is the sole Judge of this.

See notes Revers, see Tempora parant.

The Chief-Justice *Herbert*, fol. 630. cites two clear concessions (as he is pleas'd to call them) of all the Commons of England in Parliament, which he effects much greater authorities than the several resolutions of all the Twelve Judges.

But how far these are from concessions, will easily appear to an indifferent Reader. They are no more than prudent and patient avoiding of disputes with the several Kings. And there are mischiefs of the like in the old Parliament-Rolls.

It is but an humble clearing of themselves from any purpose in general, to oblige the King of any of his prerogatives (which have always been touchy and tender things), but it is no clear nor direct allowance of that dispensing their mention'd, to be any such prerogative in him.

However, I am glad to see an House of Commons to be in so great request with the Judges. It will be as at some times, more than at others.

Yet I do not remember, that in any argument I have hitherto met with, a vote, or order, or opinion of the House of Commons hath been cited for an authority in Law, before or now. Will the House of Peers allow of this authority for Law?

It will be said, that this is but the acknowledgment of parties concern'd in Interest; which is allowed for a good testimony, and throughly against themselves.

Ans. I do not like to have the King and his people to have divided interests. Prerogative and the people's liberties should not be lock'd upon as opposites. The prerogative is given by Law to the King, the better to enable him to protect and preserve the subjects rights. Therefore, it truly concerns the people to maintain prerogative.

I could cite several Parliament-Records wherein the poor House of Commons have been forced to submit themselves, and humbly beg pardon of the King, for doing no more than their duty, merely to avert his displeasure. See the case of *Sir Thomas Hoby*, whom the King adjudge'd a Traitor, for exhibiting a Bill to the Commons for the avoiding of the outrageous expenses of the King's house, 20 R. II. ann. 14, 15, 16, 17, and 23, and the Commons were driven to discover his name to the King, and the whole House in a mournful manner craving pardon for their maintaining of that Bill.

No doubt, as good an authority against the Commons for so easily yielding in a matter so forced, and so far above them. Yet afterwards a 2^d Inst. men say, that Judgment against *Sir Thomas Hoby* was reversed. As for the diffinition, page 622. of a disability actually incur'd before the making in an office, and where the disability is prevented by the coming of a dispensation; I answer, that its being prevented, is but *Potus Principis*, and a begging of the question. And so this diffinition I have (I think) fully spoken in my larger argument, fol. 40.

The late Parliament, in making this Act of 25 Car. II. had, no doubt, a prospect that probably the Crown would defend upon a *Pay's* Successor, and they levelled this Act against the dangers that might then befall our Religion and Liberties, and they thought it a good security. but it is all nullified and come to nothing, by occasion of this Judgment in the case of *Sir Edward Halm*. And that must be justified by a *Net Justice*.

As to the objection that the Chief-Justice families might have been made against him, or advice given him that he should rather have parted with his place, than to have given a Judgment so prejudicial to the Religion he professes, page 622.

This, I say, that for my part I should never have advis'd him to have parted with his place, much less to have given a Judgment against his own opinion. But let his opinion be what it was, yet seeing the clear intention of the makers of the Law contrary to that his opinion, and knowing the desperate effects and consequences that would follow upon

the dispensing with that Act, (for we were upon the brink of dissolution by it) and taking notice (as this Chief-Justice and the rest of the Judges needs must) that the King had first endeavour'd to have gain'd a dispensing power in this matter from both Houses (which was the fair and legal course), and that yet these very Parliaments which, out of so great a consideration for their times, had sever'd look'd to many prerogatives, and complied at the King's taking and collecting of the Customs, (but in truth the Collection, and all that had any hand in the receiving of them, accord'd a *Præsumption* by us) not to mention the ill artifice used in gaining the Exchequer; yet that Parliament of the King's boggl'd at the dispensing with the Act of 25 Car. II. knowing the mighty importance of it.

And though they could not but take notice that so many Judges at once had been remov'd, because they could not swallow this *Bitter Pill*, and others brought into their places, as might be justly suspected, to serve a turn, and the King's learned Council could not at first find out this prerogative to do his work with, till so many ways had been attempted, and all prov'd ineffectual, sure in such circumstances it had been prudence, nay the duty of the Judges to have refus'd the determination of it to a Parliament, and the rather, because it was to establish a Law newly made, and the consequences so dreadful, and the intent of the Law-makers so evident.

And this hath been frequently practis'd by Judges, in cases of far less difficulty and consequence. This I have also enlarg'd upon in my large argument, page 26.

Objct. But it might have been a long time before any Parliament had been call'd.

Ans. We ought to have Parliaments once a year, and after if need be, and seldom *presumptive* off our *Regis*, *pace Legis*; and we then should in great need of a Parliament even for the sake of this very case.

And these faulty Judgments are one ill cause why Parliaments meet so often; the work of Parliaments is taken out of these hands by the Judges. And it is the interest of some great Officers, that Parliaments should not be call'd, or else be hastily prorogued or adjourn'd.

As to the point of the learned *Adams*, which the Lord Chief-Justice seems to justify, I conceive he mislikes the force of the objection. *Edward Adlam* may be a true man, but this Action against *Sir Edward Hale* is suspected not only to have been injudiciously and brought by *Crown* houses, him, and his friends and friends, but it was feign'd and feign'dly prosecuted, and his honesty and honesty defended.

This solemn resolution was given upon a few short arguments at the Bar, and without any at the Bench, and upon other reasons (as I have heard) which were then made use of, are now given by the Chief-Justice; but the times will not bear them.

After all, I intend not by this to do the office of an accuser, nor to charge in a crime. But as I think myself bound in duty, on the behalf of the whole Nation, of myself, (though a small part and member of it) and of my friends, I hardly propose, that the judgment given in *Sir Edward Hale's* case, may, after a due examination, (if there be found cause) be legally reversed by the House of Lords, and that several approv'd of and confirm'd by a special Act of Parliament.

But as that Judgment of the Lord-Chief-Justice was of the utmost consequence, and his Vindication far from satisfying the People, *Mr. Atwood*, a very considerable man in his profession, at that time, undertakes to answer the Chief-Justice. I therefore to fit the whole matter in a true light, and to observe an exact impartiality, *Mr. Atwood's* Examination of the Chief-Justice's Account, is here inserted, as follows.

The Lord Chief-Justice Herbert's Account examin'd by William Atwood, Esq. Barrister at Law, wherein is shown, That *Justice* William in Law, whereby he would excuse the Judgment in *Sir Edward Hale's* case, are very unjustly cited, and so at all appear.

WHERE it is not the approach of our times, to have had men advis'd to Courts of Judicature for other merits besides Integrity and Learning in the Laws of their Country; it might seem a great piece of vanity in me, to answer a Book stamp'd with the name and authority of a Chief-Justice.

Yet, perhaps, I might be thought, not without cause, to take this as my more immediate Province; having been the last of the profession who remain'd in public companies to draw, how weakly that innocent Book-trade, 2 Hen. VII. in relation to Sheriffs, has been mislead, or misled, to serve for cause to that bulky Judgment in *Sir Edward Hale's* singular case.

Wherefore, how needless were the Chief-Justice may find it, to make productions of his sincerity, *and Account*, p. 616. this may superfluous any such from me. Nor would I willingly call him a pretensionary to apparent fact (especially considering that weakness of Judgment manifested by this defence), did he not give too great occasion for it. 1. From the large steps which he took to precipitate, and, as I am well assur'd, to solicit that resolution. 2. The manner in which he deliver'd it, wisely differing from what he now prints. 3. The unfairness of his present quotation. And, 4. The uncharitable, not to say spiteful, of these instances which he is pleas'd to give in his sincerity.

I shall not dispute, or repeat his Lordship's fair of the case; but the question upon it being, Whether the King may by his prerogative dispense with the Statute 25 Car. II. cap. 2. requiring all persons in any office under the King, to take the oath against Popery, I shall enquire,

1. Whether those Books, which he relies on as authorities for his Judgment, give any colour to it?

2. Whether, admit they did, they would countenance the resolution as he deliver'd it?

3. Whether these Instances which he offers of his sincerity, may reasonably be taken for fact?

4. Whether he in any measure clears himself from the imputation of being highly criminal?

His Lordship, like a master-disputant, begins, as he thinks, with a definition of a Dispensation, which he says, *Account*, p. 617. is given by the Lord Coke: *Dispensatio male prohibita est de jure Domini Regis concessio, propter indignitatem personarum aut similia particularia, et de dispensatione propter necessitatem personarum, aut similia, ut in officio personarum.*

Where, I must say, he very successfully begs the definition of a dispensing power, with the person in whom 'tis suppos'd to be lodged; nay,

and the reason too why it should be so, which neither the Lord Gely, nor common sense, gives him any warrant to bring into the definition. He compares it then, according to this, a dispensing power, in some case or others, is vested in the King, which yet is far from proving any thing to his purpose, for either the King may in all cases dispense as to particular persons, and thus his dispensation of *malum prohibitum*, as p. 617, and *malum in se*, falls to the ground; or else it reaches only to those cases, in which the judgment or sanity of Judges has ascribed it to him.

He adds out of the Lord Coke, (p. 617.) 1st Rep. p. 88. as an enlargement upon what he calls the definition, *Jeagueh or an Act of Parliament, which generally prohibits any thing upon a penalty that is popular, or only given to the King, may be incommuted to shew particular persons, in respect of age, sex, time, or place, for this purpose the Law gives a Power to the King to dispense with particular persons.* Where the Lord Coke manifestly defines the penalty, to shew as is given the King as Head of the People, upon which account only he calls it popular; nor, indeed, can be thought to take in what is granted to any subject that will inform, it being mentioned without distinction, whether before or after an Informacion commenced.

And that the Lord Coke's words here, 7 Rep. p. 58, ought not to be restrained further, is yet more evident, from the case of *Peal Statute*, on which Sir Edward Herbert's mis-representations will occasion my more particular Remarks.

As Sir Edward, considering what interest he has here, may be presumed something convenient with Priests and Jesuits, he might, among others of his ilk, have censured the learned *Saunders* (a), who alter the definition, which he makes to be *Legis benevolencia*, in a distinct Chapter shews, with whom the ordinary power of dispensing (which he distinguishes from that which is delegated) is lodged, where he says, ch. 14. p. 395. *Certain of our habers auctoritate potestatem dispensandi, qui legem iustit.* And even from the reason, *Quia qui contra iustitiam patitur potestatem.* So that none can have this power, but he, as he who is vested with the legislative power, or, as far as it is delegated from thence. That the King has not the legislative power of dispensing, in what I have formerly proved at large (b), and it lies on the other side to shew, that the dispensing power has been delegated to him. Yet thus much may be said on the contrary:

First, That the King could not in Law be presumed to have exercised such a power by himself; for that the ancient Law provided, that he should have a Council whole in Parliament, who (as the Charter affirm'd to be hereditary of the ancient Law, and from at the Coronation of Hen. III. *hinc* (c)) were *facti consilium* *Domini Regis et Regni solutio tractatus*, &c. for accusations *personarum contra justitiam* established, and thus it was asserted the Law long before it was altered by the impeachment of Roger Mortimer, &c. III. part of which was, that *Wortem ita est ordinatum in Parlamento sub auctoritate Regis*, that *four Bishops, four Earls, and four Barons, should stand by the King, Parliay Counsellors; without whose assent* *Nal* *gron* *Batellus* *in se* *Feud*: nevertheless Mortimer would undertake to manage all by himself, approaching royal Power (d). And it is easily to be shewn, that such a Council was in use, or continually in use, as the right of the Kingdom, from the time of the Conquest, confirm'd 28 Hen. III. till the end of the Reign of Hen. VI.

2. A Power to grant any *assente* to the Statute, could not have been a right in the Crown at Common Law, for we have clear proofs of its origin and confirmation beginning from the fulgurant fountain of Rome, as a honest populi lawyer censur'd with a deep sigh, 35 Hen. III. This was *assente* *Matthieu Perle* calls, a *dispositio* *adversus* *apud* *all* *Regem* *et* *Justitiam*. And when, the year after, King Henry urged the example of the Pope for any *assente*, the Prior of *Jerusalem* says, *God forbid you should use this unchristian and unchristian word; as long as you assente Justice you may be King, and as soon as you refuse it, you will cease to be King*, which shews how little foundation in Law it then was thought to have; and what the whole Nation thought of the Pope's use of it, may be seen at large, in *Matthieu Perle*, and Sir Thomas Aquinas's words in the 4th *Quæstion* (e).

Farther, the reasons given why the King ought to have this power, fail here upon many accounts.

1. In that the interest of the whole, of which the Legislators are the best Judges, when they make the Law without exception, ought to outweigh all private inconveniences.

2. The Law has provided a more certain and equal remedy, having taken as sufficient care for the meeting of Parliaments, once a year at least, and I may say, (f) sitting too, as it has for the sitting of the common Courts of Justice, as appears from the several Statutes in print, and others in the Rolls, which avoid the common evil upon the words, *quousque* *si* *non* *est* *factum*.

And there were, like the famous triennial Act, provisions for the greater certainty of meeting to often at least, but no recourses from the old Law, which, as appears both by the *Mirror*, and the life of King Edward (g), was for the great Council to meet twice a year at London.

3. The great reason assign'd in the Latin quotation from the Lord Coke, *propter necessitatem providendi de omnibus particularibus*, which is alter distinguish'd, as to person, time, and place, and by no means to be applied to the case in question: For, 1. The Law was made but very few years before their Lordships' protestation, and not given more incommode by length of time, to any particular person, than it was at the making of the Act. 2. The Law-makers had in their immediate prospect every particular person of the Realm's continuation; and the time when, and place where the danger would happen, if any such were commision'd.

Let us now see what help we can have from his second quotation from

the Lord Coke, which is 7 Rep. fol. 73. But he intends, I suppose, fol. 37. and would have it believed, that it was the opinion of all the Judges in England, 2nd 11. that the King may dispense with any particular person, that he shall not incur the penalty of the Statute, though it be an Act made *pro bene pacis*, and that this is a trait and confidence irreparably annexed to the royal person of the King, *Account*, p. 617. In which, 1. He again overthrows his distinction of *malum in se*, and *prohibitum*, making that *provis* at large, in relation to any Statute *pro bene pacis*. 2. He manifestly perverts the Lord Coke's words, whose words are, 7 Rep. fol. 36. *W. a. a Statute is made pro bene pacis, and the King, as head of the Commonwealth, and the fountain of Justice and Mercy, is by all the Realm styled with it is a trait and confidence irreparably annexed and committed to his royal person, as he is high a point of Sovereignty, that he cannot transfer it to his subjects in the power of any private person, or to any private act, for this was committed to the King, by all his subjects, for the public good.* But *trist* it is, that the King can, upon any cause moving him, in respect of time, place, or person, be made a non obstante is dispense with any particular person, that he shall not incur the penalty of the Statute.

Where the sole question was, of transferring over a penalty granted in the King, as entrusted by all the Realm to see the Statute put in execution, by incurring the penalty. This trust is assigned irreparable, and not to be transferred over, but that wherever the same may dispense with the penalty granted to himself upon which, I shall say, our Chief-Justice has made a very full breach; for what is this to the informer's pain, concerning which the question before him was? But surely there is a mighty difference between these two propositions: "Where the subjects have entrusted the King with a Statute made for the public good, this trust is irreparable, and cannot be transferred to another: but the Statute so entrusted, may be dispensed with;" which is all that is to be gathered from my Lord Coke: And thus, "That an Act be made for the public good, yet the King may dispense with it, and that is a trait and confidence irreparably annexed to the royal person of the King;" which is Sir Edward Herbert's perverse comment. In their, Lord Coke's words, *Where the King is entrusted with the execution of a Statute made for the public good, he may dispense with that Statute*. Sir Edward Herbert says, he may dispense with any Statute made for the public good. Upon which 'tis to be observed, that the question in the Lord Coke, was not of dispensing, but granting over the penalty: which penalty, he says, is not to be transferred over: the other would make it of dispensing, and that that power is irreparable, and not to be transferred, is apparently changing the force of the question.

His next step is to the Year-book of H. 7. fol. 11. 12. in which he went on to find the power, which he calls the *trist*, and great case which he cites, wherein the King's dispensing power is defended and limited.

"There is a diversity, says the Book *Account*, (p. 617.) between *malum prohibitum*, and *malum in se*; as Statute forbids any man to coin money, and if he does, he shall be hanged; this is *malum prohibitum*: For before the Statute, coining money was lawful, but now it is not so, and therefore the King can dispense with it. So if a man ship wool in any place, but *Calais*, it is *malum prohibitum*, because it is prohibited by Act of Parliament. But that which is *malum in se*, the King, nor no other person can dispense with: as if the King would give a man power to kill another, or license one to make a nuisance in the highway, they were void, and yet the King can pardon such things when they are done." Upon this case 'tis observable, that the power of dispensing is here ascribed as relation to things, and not persons: wherefore according to this, taken in Sir Edward Herbert's latitude, the King may grant dispensations to all in general, where the matter is only *malum prohibitum*: Whereas he himself owns, that the nature of a dispensation is particular, and given to particular person by name. 2. Many things in *Magna Charta*, they say, are not, but *male prohibita*: and in *Magna Charta* itself may be dispensed with, as he himself owns, that the King may dispense with some parts of *Magna Charta*: And methinks he could not but be sensible of this contradiction. Wherefore the rule there, admit it were a Judgment in Law, as it was not, being only spoken *alter*, by one of the Judges (h), can be applied only to such cases as are threefold. The first is that of coining money, which goes upon the ground in *Reynolds's Reports* (i), where 'tis said, that *such Statutes as give a Privilege may be dispensed with*: And that of shipping wool at *Calais*, the King's Staple, is of the same nature, and both sufficiently shew the distinction of *malum prohibitum* from *malum in se*, to relate barely to such things as become evil by accident, as they are as well as accidental things: which is how any interferences with the rights of the subjects in general, or particular.

And I much wonder that Sir Edward Herbert should cite my Lord Vaughan, in the case of *Thomas and Sorrell*, as confirming what he would infer from the Year-book, when Lord Vaughan says, fol. 332. That old Rule has more confirmed men's Judgments in the *felicit*, than *ratified* them, and fol. 333. himself denies that the King can dispense with every *malum prohibitum* by Statute, though prohibited by Statute only.

Oh, but my Lord Vaughan shews, that a Dispensation does *jur dare*, and makes the thing prohibited to all others, lawful to be done by him that has it. Does any part of every *malum prohibitum*? By no means: Wherefore we may apply it to these cases in question, which concerned men's interests about which the King had a Privilege by Statute Law: and the dispensing with that, falls within the rule in *Reynolds* (j), agreeing with the Lord Coke, in the case of *Peal Statute* (k). Yet even thus much was a point gained by the Privilege, since the 13th of H. VII. for it is then made a doubt before all

(a) *Saunders de Legibus*, lib. 6. cap. 10. fol. 126. ubi. cap. 14. fol. 135.

(b) *V. The Assent ad Antiqua* 20 Hen. 3. cap. 10.

(c) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(d) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(e) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(f) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(g) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(h) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(i) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(j) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

(k) *W. R. R. per de anno ad H. III. 20 Hen. 3. cap. 10. ubi. R. V. per de anno ad H. III. 20 Hen. 3. cap. 10.*

himself: which I would be loth to think that Lord Fagbush is (a), who owns, that the King cannot dispense in any case but with his own right, and not with the gift of any other, which he confines not to his ideal persons, but considers fully, (as he says expressly (b)), *if the wisdom of the Parliament* must first make an Act in relation, *pro bono publico*, the importation of foreign manufactures, that the subjects of the Realm may apply themselves to the making of the said manufactures for their support and livelihood, to grant to one or more the importation of such manufactures, without any limitation, *non sibi* the said Act is a Monarchy, *pro*, and said (c). For this I am free, particular persons are not entitled to act upon their own accounts. Indeed he supposes the King may, of licence, bestow the quantity, and that for present use (d), not by way of merchandise, as not being against the end of the Act. Wherefore in our case all subjects being understood as Protestants, their support and encouragement being provided for by the Act, and the letting Papists into the Government signify the end of it, who can doubt but Lord Fagbush would have pronounced Sir Edward Hales's dispensation void?

And whereas our Judge falls in his exordium, *Acumt*, p. 632. That though this Law was made for the interest of Religion, the offence is not directly against Religion, but against a political Constitution, tho' made for the interest of Religion, he might not only have learnt from Lord Coke, that the subjects have such an interest as the King cannot dispense with in what is made void to conscience, that is, *in rebus*, for the good of the Church; but Lord Fagbush says (e), that there are *many points* not to be dispensed with, and influences in some things, which are *substantive in fact*.

Now, besides what already has been shewn, to dubble these three last influences urged by Sir Edward, that they are not *pro bono publico* persons, as that rule is vindicated from misapplications, may appear, in that neither of them affect all the people in general. As to the Clergyman, they can only do injury in their respective positions where they are beneficed, and the *Magistratus* in part of *Wells* where he is an officer, not besides, can the Clergyman be supposed much to prejudice the interest of Religion, being the Pluralist cannot supply his Cure but by one qualified, and the *Island* might be a good man, and good Minister. And yet even these would fall within Lord Fagbush's acceptance of his own rule (f); for he shews that laws made for the benefit of but part of the Kingdom, Artificers and Husbandmen, cannot be dispensed with to any one person, to frustrate the ends of the Statute.

This leads to another ground which he makes with the Lord Fagbush's authority, in answer to the objection, that the Law was made *pro bono publico*, *Act*, p. 632. and is *substantive in fact* for the people. Indeed Lord Fagbush will have it, that the sole reason why a Statute cannot be dispensed with is, *quia*, that the Law was made *pro bono publico*, because all Laws were made for public good; and yet dispensations had been allowed in fact, nor was the degree of public good which they altered the case; yet he shews that the extent of it does, and *forma* full to keep to Lord Coke's rule, where the People had entrusted the King with the Law, as Head of the complicated body, there the trust was entirely in him; but when the law extended in interest not only to individual persons, but to a considerable part of the Nation, much more than to all, in order of which cases the Statute is *pro bono publico* person, in number of state can the King dispense. And that the Statute in question is of the largest extent, appears as the Nation is a Protestant Nation, the religion established by Law, and these provisions necessary means to preserve it, and therefore though the Papists have no benefit by it, they are not in Law, in this respect, any part of the people; for people always is taken for them that have legal interests. Thus when the Statute provides (g) that the People of Counties shall choose their Sheriffs, it relates not to all the People in general, but only to Freeholders.

Secondly, shewing thus far, that these grounds which our Judge pretends to have gone upon afford no maintenance even to his palliation of the judgments, they will appear much less to conscience if it was declared; which to evince, I shall here let it down *officiis* words, from that careful reporter Mr. Blosby.

It was on that memorable day, when, as another mark of his sincerity, he directed the willing Jury, and concurred in the infamous sentence against that excellent Author Mr. Toland, when the Jury was gone out, the Chief-Justice took occasion to inveigh against spreading of scandalous reports about cases depending in the Court; and to prevent any thing of that nature in the case of Sir Edward Hales, he thought fit to deliver the opinion of the Judges in this manner:

Chief-Justice. In the case of *Graham and Hales*, wherein the Defendant pleads a dispensation from the King, it is doubted, whether or no the King had such a prerogative? Truly, upon the argument before us, it appeared as clear a case as ever came before this Court: But because men fancy I know no what difficulty, when really there is none, we were willing to give so much countenance to the question in the case, as to take the advice of all the Judges in England. They were all agreed, as I remember, that the King had no such power, and the great case of the *Ship Money* was whether the dispensation in that case were legal, because upon that depended the execution of all the Law of the Nation? And, I must tell you that there were then ten upon the place, that clearly delivered their opinions, that the case of the *Ship Money* was good Law, and that all the Attorneys grounded upon *Indemnities* found by Juries returned by such *Ship Money*, were good, and not erroneous; and consequently, that men need not have any fears or scruples about that matter. And in the next place, they did clearly declare, that there was no imaginable difference between that case and this, unless it were, that then there was the clearest evidence of the two, and liable to the former exception, My Brother *Pennington* was inclined

to be of the same opinion, but he would rather have some more cases to consider of it; but he has since sent by my Brother *Hilbush* to let us know that he does concur with us. To these eleven Judges, there is one dissenting, Brother *Stuart*, who yet outwitted his conscience, in the King cannot dispense in this case. But that was opinion of one Judge, Judge, against the opinions of eleven? We were a full Court, and our judgments before, and having the concurrence of all, we were a full Court, we think we may very well declare the opinion of the Court to be, that the King may dispense in this case, and the Judges go upon it, grounded.

1. That the Kings of England are sovereign Princes.
2. That the Laws of England are the Kings's Laws (h).
3. That therefore, 'tis an inseparable prerogative to the Kings of England, to dispense with Penal Laws in particular cases, and upon particular necessary reasons.

4. That of those reasons, and those necessities, the King himself is sole Judge; and then, which is consequent upon all,

5. That this is not a trust invested in, or granted to the King by the people, but the ancient remains of the sovereign power, and prerogative of the Kings of England, which never was taken from them, as they may be Authors of such a dispensation being pleaded by them. Declaration in this case, and such a dispensation appearing upon Record, to come true enough to save him from the infidelity, Judgment ought to be given for the Defendant, good *pro* and *in rebus* for all.

'Tis evident, that these propositions are very wide from any thing that he has, or could have urged from the Books, unless upon a branch of infamy has been fit upon the Judges. The examples of which, work in several ages, one would have thought, might have given notice in caution; yet indeed, he might have had more of this kind from those on the other Crown, who, I think, are now justly well affected of their nation. However, proof of dispensing the King has, the Books suppose it to be entrusted by the people; but according to this resolution, it came down from Heaven the Lord knows how. And as he goes upon this supposition of an absolute sovereignty in the King (i), inseparable from his person, as such will have it, unless that he granted, all that he builds upon it, are but chaff in the air: for this we are to have recourse to our constitution, to see what that power in the Prince is, which the great *Parliament* says, is, *a power of grace*, "derived from the people." But for that we have no occasion, from any so much as pretended proof of his assertions; nor can any be offered but from the resolution of the infamous *Ship Money* Judges, which seems to run parallel to this, but is indeed far short of it, for though they made the King the sole Judge of the Kingdom's necessity, yet they supposed it to be at a time when there was a real danger to be prevented by the exercise of this Judgment, whereas here it is abused to the bringing in what the Parliament liboured to prevent.

But I must observe, *Acumt*, p. 632. 2. That whereas Sir Edward *Hobart* owns the dispensing power to be of dark learning, and that it is very fit it should remain *in rebus* to a determination in *Parliament*, that Judges may judge, by more certain rules, *ad hoc* of *Parliament* the King may, and *ad hoc* he may not dispense with. Grant his premises, and there can be no darkness in it; for the power will extend to all cases, as far as the legislative does; and that he has determined positively in this point, *Acumt*, p. 637. where he makes all things, not forbid by God's Law, to be dispensable by the King. Nay, if he might dispense with every *malum prohibitum*, that is not *malum in se*, without such qualification as I have shewn ought to be, it would go farther, even as far as God's power (s), who never dispenses with more than his own positive Laws, nor such as are founded upon eternal reasons: and thus the positive Laws of God and Man would be subject to the pleasure of the Prince. 2. He has taken it out of the power of the Parliament to fix the bounds of his extraordinary power; for what he alienates power, he says, never was taken from the Crown, nor can be; because, *in rebus*, "in the ancient remains of the sovereign power and prerogative of the Kings of England. Whereby the way, there is an implication contrary to what he would infer; for that implies, that 'tis but the remains of a power diminished and impaired. 3. His granted and royal resolutions are not only very different, as it obvious by the comparison, but very contrary: *Acumt*, p. 632. One says, 'tis a dark learning; the other, the case is as clear as ever came before the Court.

Thirdly, Thee his infanciness is sufficiently evident from every part of his defence, yet it may not be unprofitable for the Publick, that he should be followed to these influences in which he glories; for which, 'tis not enough for him to shew some one Act wherein he is singular, if he follows the multitude to sin in others, even of the same kind; which if he does, he can no more acquit himself of Perjury and breach of Truth, *Acumt*, p. 616. than the rest of the tainted herd.

In matters of blood, *Acumt*, p. 621. he affects the reputation of great tenderness, and thinks he has been scrupulous even to a fault. For, says he, *in fine* upon *Acumt*, that he has been advised *Præ* by *Wyll* and *Wyll* Judge then, which seems to run parallel to this, but is indeed far short of it, for though they made the King the sole Judge of the Kingdom's necessity, yet they supposed it to be at a time when there was a real danger to be prevented by the exercise of this Judgment, whereas here it is abused to the bringing in what the Parliament liboured to prevent.

But I will not say that the Judges could as well acquit himself in the case of Lord *Braddon*. The latter's heroic merits of the Crown, too great to be rewarded, and the former's hereditary valour, dangerous to those who had reason to fear brave spirits, occasioned the rigorous prosecution of both. The

(a) *Thomson v. Smith*, p. 220.

(b) *Thomson v. Smith*, p. 220.

(c) *Thomson v. Smith*, p. 220.

(d) *Thomson v. Smith*, p. 220.

(e) *Thomson v. Smith*, p. 220.

(f) *Thomson v. Smith*, p. 220.

(g) *Thomson v. Smith*, p. 220.

(h) *Thomson v. Smith*, p. 220.

(i) *Thomson v. Smith*, p. 220.

(h) *Thomson v. Smith*, p. 220.

(i) *Thomson v. Smith*, p. 220.

(j) *Thomson v. Smith*, p. 220.

(k) *Thomson v. Smith*, p. 220.

(l) *Thomson v. Smith*, p. 220.

(m) *Thomson v. Smith*, p. 220.

(n) *Thomson v. Smith*, p. 220.

(o) *Thomson v. Smith*, p. 220.

(p) *Thomson v. Smith*, p. 220.

(s) *Thomson v. Smith*, p. 220.

(t) *Thomson v. Smith*, p. 220.

(u) *Thomson v. Smith*, p. 220.

(v) *Thomson v. Smith*, p. 220.

(w) *Thomson v. Smith*, p. 220.

(x) *Thomson v. Smith*, p. 220.

(y) *Thomson v. Smith*, p. 220.

(z) *Thomson v. Smith*, p. 220.

(i) *Thomson v. Smith*, p. 220.

(j) *Thomson v. Smith*, p. 220.

(k) *Thomson v. Smith*, p. 220.

(l) *Thomson v. Smith*, p. 220.

(m) *Thomson v. Smith*, p. 220.

(n) *Thomson v. Smith*, p. 220.

(o) *Thomson v. Smith*, p. 220.

(p) *Thomson v. Smith*, p. 220.

(q) *Thomson v. Smith*, p. 220.

father was obliged to change his foul, till he might become more equal, not unassailable of our Saviour's advice, or rather precept, *Where persecuted in one County, is to flee into another*; that tho' he contemned Death, he might not provoke it. The five falling into their hands, each his life and honour, which the friends were bound to maintain, were lost by him, were delivered for a freer trial. In subsequence to which, the Cause of life, and the selling Jury, to find him guilty of high treason, chiefly upon a supposed conspiracy to drive the Duke of Gloucester, which, if true, were but felony by a Statute (s), as to that part, yet in force, and so could be no evidence of murder. Nor would it follow the fact to be found specially, tho' he pretended not to answer the Cases and Records, which were cited to these, that the matter alleged could not be true; nor did the then Solicitor undertake the task, notwithstanding that flow of reasoning, which he laboured to set aside the authority of Lord Coke (t), pleading expressly and unanswerably for that injured Hero, (of whom the Age was not weary) the Lord Ruffe.

Nor was the picture of Lord Bismarck's craft left defective due the matter, for besides the foundation *Servus*, who came to defy us with another King, there was but our witness in the eye of the law – his indeed is *foi et loy* heard, as that he might be heard, being an *apostrophe* (*ex*) but no way could be, considering how far he had been drawn, with his letters about his belt, even to (*a*) contradict himself. The other by no means legal, being under an outlawry for High-Treason, unexcused! For though the execution of that Judgment (*foi et loi* in law) is pardoned by the King, yet the crime was by no means pardoned, to let him right as to fame; which though the Council offered to make good, they were not suffered to speak so it; and yet the point is very (*ex*) clear by ancient authorities, and confirmed by later, without any thing really to the contrary. Nay, farther, though before all these things, such a *testator* was urged in arrest of Judgment, upon which Judgment had (*ex*) recently been affirmed, yet, without enquiring whether the fact were true, or the Book law, that, with its own *ex*press words, and the life of man, and the peace advanced in the Government, is some little the better off. Such was Sir Edmund great incorruptness and tenderness where the life of man was concerned.

He adds a trope in a eulie before himself, and the other Wharpers of the High-commission-Courts, but his singularity therein can be no excuse for his being at all upon a commission apparently against the Statute, which may say not only to the power of King and migration, but which is a commission *extended* to him, the Imperial Bishop, who it really had, and such a commission it was, as necessitated compliance with the Act (2 long since repealed), which not only made M. VIII. Head of the Church, but gave him power, which he afterwards delegated to Lord Cromwell, (F. 34 R. VIII. c. 10.) to redress all errors, heresies and abuses, as Epistolar authority.

Fourthly, I suppose it is by this time pretty evident, that Sir Edward's crime will admit of no extenuation; but the aggravations are many, it is alarming.

3. That he (*Acc. p. 623.*) and his brethren were the inventors of this diffusing Power, in such extent as he contends for in the *Print*, but much more in his oral resolution.

That the *Test. P. B.* contains an error in that single case, but of large and mischievous consequences: and if the King could dispense with that Statute upon the reasons given, and circumstances as coming in the *How. Hale's* case, others may well conclude from thence, that therefore he has a power to dispense with all other Statutes, even such as confer or withhold any of the subjects any manner of interest whatsoever, in real lives, or offices, or honours, or franchises, or liberties, or other such things, and that such a dispensation is a disability actually incurred before the dispensation, therefore, by reason of this case, the King may dispense with such Statutes where a precedence disability is actually laid upon a man, and as there is upon the Members of both Houses, till they have taken the oaths and affirmations prescribed. There are not consequences which may flow from the bestial ignorance of angry men, but such as have warrant and foundation from the law itself.

25. His is for preserving the *wisdom* of the Nation, as to make the breach *less* toward the undue continuance of Slavery, equal, may be beyond what they could devise for the security of their religion, or their honor, so an undervalued the holy religion, which I think be yet perfect when however it would not come up to the point, according to the difference which himself receives. *See* p. 618. Speaking of the Statute 23 H. VI. c. 1. He says, "The recital in the preamble, and the whole part ⁴ view, if compared with our Statute of 7 Jas. VI. c. 2. equals it in every particular, and in some goes beyond it: For the mischief therein is this: *Large-Statute* are only in their words, "For preventing dangers which ⁵ may happen from Popish Recusants, and quelling the minds of his Majesty's jellies of good subjects: The other, "For preventing the importable damage of the King and his People, by poverty, manslaughter, and great ⁶ opportunities." Then he goes on to the *view*, expost against *non-assent*, to creating a disability, but, according to the usual style, he does not mention it, and even says, "but he had rather not to dwell there, as has been sufficiently evinced already." The questions here are two: Whether the mischief intended to be prevented are equal in both? 3. Admit that were equal in degree, whether they are in extent? Which if they

are not, still the consolation, if real, will fail him; according to the difference which he himself receives, of *pro bene populi compunctis*, and *superfluum actum*.

the other side, I suppose he thinks the English imposture gives the odds; as if Papiery were an Epitaph to repentance in our Protestants, for what they ought to do their utmost to prevent; as if it did not carry the belly of it, perjuries, manslauhters, and great oppression, by wholesale; or that matches more remote and accidental, as the continuance of sheriffs, may abate to corruption, and that occasion the other fatal train, could equal the more immediate and certain consequence, unless by good laws prevented, of French conversions, proceeding from fixed principles. But then to give Judging to frustrate this necessary law, at the same time the Papists and the King of their own disposition to lead them, to make a law, that would alter the law as our own laws are; still us, the Law and his Court by way of emanance, that is, the great Council, Parliament, are above him (45).

and that, as the sole interest of the *subject* in the law about Sheriffs, is to be neither equal, nor so immediate as in our Statute, there needs a new way to show the difference of the extent: The peace only of particular Counties, and that by small inferrible degrees, in there coerced, Nay, admit the King had the power, and should to violence that trust which *Mr. Edwards* will have to be imposed in him, (*Ms. p. 610.*) as to extend it to all Counties, where he puts in the Sheriffs, yet this could not affect all the People; because there might be a retreat to *Lancaster, Middlesex, and Westminster*, in either of which has it been pretended that the King had such a power, all the late violence of force, and treachery of Kings, gave that unhappy sale of perjury, manslaugers, I may say murder, and oppression; before which, *Lancaster* was a perfect *Gyrene* in an English King.

3. But what can excite our Chief Justice's so apparent faltering both Reynolds and Love-holds? Of course, at least, his thoughtless negligence in not going to the fountain-heads, but setting up the verdicts of a jury against the facts themselves; and the extraordinary opinion of argumentation. The Judges, say the very annotations of Reporters, furnish to any matter in question, against solemn resolutions; which, either without falsifications or criminal negligence has occasioned the answering objections with a case which never had a refutation, but what he and his brethren gave, when he was brought in by head and shoulders, only to be leading calf to this.

4. He could not but know, that the case was finally argued against *Edwards* *Hadley*; either he, or the late *Edwards* and *Hadley*, having given the law on both sides: wherefore turn criminal for the Chief-Judge to say that the Chief-justice "clear upon the subject." I am far from being unmerciful to our great lawyer, but in consequence of his being so leading ought to be argued thus at least; this was but once: And the learned *Hadley*, if *Edwards* who could have for it in the trial light, was refused to be heard to this, though he resorted it.

5. Our Chief Justice might easily have found that the beginning of an applicant's was within time of many, which would not be enough to entitle the King too prerogative. For as 'tis in *Powder*, every prerogative contains a prerogative, for it tells in usage (5); that is, such as are not derived from known Grants of the People. And he might have learn from that great man, where he would find time to do this, that *Prerogatives are equal to divide Quillets*, but in *Jack Cade* as *chief*, which apply upon fundamental principles; for which *demerit* may be to arise, million of. *Prerogatives are in no person* (6).

And though we call it a *penance*, as I observed before, are exemplified of what that time, as well as P. III. yet that diligence and faithful search into antiquity, Mr. Prynne, shows, that they were then made use of, only to revoke force indifferent grants or privileges, but not to elude, subvert, or dispute with any penal Laws, or Acts of Parliament, till they were introduced by religious persons, after the Statute of Mortmain, 7 Ed. I. to elude and frustrate the Act. And he tells us, I am thus far shewn it is no other than a *penance*; for they might have said in Lord Paget's case, 7 Jac. 1. that the King is that wife dispensed only with his own right; and concludes not the penit Law.

Though effective influences of Judges are but evidence of the law and facts are to be examined and ruled by the constitution and fundamental maxims of the inherent rights and liberties of a free-born People; yet Sir Edward had had the diligence to read what might have occurred on this subject, or the honesty to hear it from others; he might have known that it is far from being a feigned point, that the King might defend his particular person, as to whatever is not prohibited by the law of God; and that his disposition makes the thing prohibited lawful to be done by him that has it (a). The farther we look back since this power has come in question, the less does it seem allowed.

In addition, the petitioners stated that the affiant of that Council, which as I observe before, was not done in Parliament, had granted to merchants-demands, that before, the false liberty about flagle commodities which merchants-alike had, though this was not by the King alone, and for the benefit of native yet the merchants, fearing that they might be unspended in time to come for their merchandise, which they so had passed by virtue of such grant forefought as they were made out of Parliament, for their surety, obtain a ratification and confirmation in Parliament.

(a) Wild, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848,

(18) L. Hughes, *ibid.*, p. 30. 'To therefore let my War be an Over-All to testify the design of the death of the Kings; and the ever of my Lord Calke his possibly called my Lord'. The he goes to rest by the side of Mary and David Calke, which was not of leaving War within the Kingdom, and besides were expounded by the Over-All of William, Vis. *ibid.* *See* Hughes, *ibid.* of the Crown, a. 1. *ibid.* and b. *See* Hughes's *ibid.* of the *ibid.* *ibid.*

(c) *Los. Affs.* 32, 36, 38. Cf. *As Apparents* Dandy, boys, *If no shill palls pass after dandy party, too fast for male.*

[illegible][illegible]

(2) *Phonetic of Henry*, p. 125, 126. *Faustian*, p. 219. *Man*. This was a tale of self confinement, the leading Proceed into *Wald*.
(3) *Head Project*, p. 4. *Self*, *High*, p. 3. *Self*, p. 1. *Self*, p. 1. *Pyrene's Journal*, p. 133.
(4) *Vol. 1* and *Dr. Smith's Complete MS.* dedicated to King James H. Prof. All the Librarian and Publishers for the People can proceed to, were the *Grains* and *Cooperation*.

(14) V. Ball's *Ch. Ind. Proc.* 1870, 34 E. Hk. 6, 35.

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"By superior power ordain'd of God, we understand not only
Princes, but all politic States and Kingdoms; some where the
People, from whom the Nobles have the least interest to the sword
that Princes have in their Kingdoms: And in Kingdoms where Princes

have rule by the sword, we do not mean the Princes' private will
against his Laws, but his prerogative derived from his Laws, and agree-
ing with his Laws."

XL. The Proceedings against Mr. SAMUEL JOHNSON; who was tried at the King's-Bench Bar, *West-
minster*, for High-Misdemeanours (and found guilty of writing and publishing two seditious and
scandalous Libels against the Government); on Monday the 21st of June, 1686. 2 Jac. II.

SAMUEL JOHNSON having been arraigned upon an Infor-
mation for high misdemeanours, in writing, printing and publishing
two scandalous and seditious Libels, &c. and therein pleading *Not
Guilty*, was, by a Rule of Court, brought again to the Court of *King's-
Bench*, Westminster, on Monday, June the 21st, in order to take his trial:
when a Jury of Knights and Gentlemen of the County of *Surrey* being
sworn, the Information was read; the substance of which was, "That
he, the Prisoner, had, in the Parish of *St. George's, Southwark*, on the
29th of May, in the second year of his Majesty's reign, maliciously
and defamingly published two pernicious, scandalous and seditious li-
bels, to raise and stir up sedition and rebellion in his Majesty's liege-
subjects, &c." The title of one being, *An Humble and hearty Address
to all the English Protestants in this present Army*. Which is as follows:

*An Humble and hearty Address to all the English Protestants in this present
Army.*

Gentlemen,

NEXT to the duty which we owe to God, which ought to be the
principal care of men, of your profession especially, because you
carry your lives in your hands, and often look death in the face: the se-
cond thing that deserves your consideration, is the service of your native
Country, wherein you draw your first breath, and breathe a free English
air. Now I must desire you to consider, how well you comply with
these two main points, by engaging in this present service.

Is it in the name of God, and for his service, that you have joined your-
selves with Papists, who will undo fight for the Malt-hoek, but burn the
Bible; and who seek to extinguish the Protestant Religion with your swords,
because they cannot do it with their own? And will you be aiding and
abstaining in set up Malt-hoek, to reach that Popish Kingdom of darkness
and idolatry amongst us, and to train up all our children in Popery?
How can you do these things, and yet call yourselves Protestants?

And then what service can he do your Country by being under the
command of French and Irish Papists, and by heaving the Nation under a
foreign yoke? Will you help them to make forcible entry into the houses
of your countrymen, under the name of *Quartering*, directly contrary to
Magna Charta, and the *Præsumption of Right*? Will you be aiding and abet-
ting in all the murders and outrages which they shall commit by their void
conscience? Which were declared illegal, and sufficiently punished by both
Houses of Parliament (if that had been any need of it), for it was very
well known before, that a Papist cannot have a conscience, but by the
law is utterly disabled and disabled. Will you exchange your birth-right
of English laws and liberties for martial, or club-law; and help to destroy
all others, only to be saved last yourselves? If I know you well, as
you are Englishmen, you hate and scorn these things. And therefore be not
unusually yoked with idolatrous and bloody Papists: Be valiant for the
truth, and show yourselves men.

The same considerations are likewise humbly offered to all the English
Soldiers, who have been the bulwark of this Nation against Popery and
Slavery, ever since *Elizabethe*.

And the other, viz. *The Opinion is this, that Resistance may be used, on
only our Religion and Rights should be invaded*: "Tending to withdraw
them from their duty and allegiance, and to excite and stir up the fol-
lowing, viz. to mutiny and rebellion, &c." After this, the Information was
read, by the King's Counsel, opened to the Jury, as to the nature and cir-
cumstances, together with the evil consequences that might attend such bold
and dangerous attempts: which being rendered largely and exactly, as to
the particulars mentioned in the said Information, whereunto the Prisoner
was charged, they proceeded to call their witnesses to prove the fact.
And first Mr. *Bolton*, at the *Three Bynkers* in *Southwark*, being sworn,
gave evidence, That coming acquainted some time since with the Prisoner,
and about a fortnight before his Majesty's death, discoursing with him, the
second of these Libels was mentioned: And soon after he sent him a box
with some sheets of these in it, to be disposed, and gave him notice that
he had a second Paper in the Press; and withal, a caution not to publish
these he had sent before, till he had received that which should be the
former Libel before-mentioned. And further, that about six or eight
months before that, the Prisoner had sent him other Libels to dispose of;
and being thereof the Libels mentioned in the Information, he gave evi-
dence, that he had received that which he sent him, and could give no account
of what was in it, as to particulars.

And Mr. *Wintour*, sometime servant to the Prisoner, being sworn, gave evi-
dence, That by her master's or mistress's directions, he was not certain

which, she took a paper, and caused him to carry a box, wherein one of
the Libels mentioned, viz. the second, was inclosed to Mr. *Bolton*: And
that she, viz. by the like order, carried other papers look; some of which
were the Address, &c. And being asked by the Prisoner, how she knew
that? His reply was, That she knew it, inasmuch that he had read the
title, and very well remembered it.

The Paper that carried the box gave evidence, That the said had
hired him to carry a box to the *Three Bynkers*, and that he went with him,
and paid him according to agreement, and that he took it up in *Spital-
fields*. After this, the teller, who searched the Prisoner's lodging with
the Right Honourable the Earl of *Sunderland's* warrant, being sworn,
gave evidence, That he found a Paper in writing, upon a table or stool,
which appeared in Court to his part of the copy, or the same with the pa-
per, entitled *The Opinion*, &c. he viewing, upon sight thereof, that it was
the same he found in the prisoner's lodging. Then was the Book of the
Velly, or Parish affairs of *St. Paul's, Covent-garden*, produced; wherein
the Prisoner, sometime past, had given an acquittance for money received,
as an assistant Curate, &c. which being compared with the paper, seemed
not to differ in the kind. But no other evidence appeared in that case,
than that the Book had been always kept in the Velly, and for the most
part under lock and key, and it being put to the prisoner, he did not
greatly deny it. When for a further confirmation, *John Dore*, a Printer,
and his wife, were sworn. The former deposing, That he had printed a
book for the prisoner from a manuscript, and that hand was very like that
of the Libel produced in Court; but he had never seen him write, and
therefore could not be positive that that manuscript was his own hand.

As for his wife, her evidence was, that the prisoner paying her some
money, she had given him an acquittance; but that, as she conceived,
he wrote all but her name; for going up stairs, he soon returned with an
acquittance, which she falsified.

This being what materially was given in evidence for the King, the
Prisoner had leave to make his defence. who after some discourse, al-
leged, That he had been confused, and had not had opportunity to pre-
pare for his defence, as not having leave to go to his Counsel. To which
the Court replied, That he had leave upon the motion made on his be-
half, to send for Counsel; and that they ought not to be refused coming
to him. Then he urged several other matters, which being over-ruled by
the Court, he proceeded to insist, that he hoped, that seeing he was
indicted for a seditious and scandalous Libel, the Jury would con-
sider whether those papers they had heard read, were his or not? But was
told, that the Jury ought to consider it only as to the matter of fact, whe-
ther he was guilty of writing or publishing these, &c. and that the rest lay
in the breast of the Court to consider. "I beseech me argued, That
though they might be free, yet it was no subornation, as it was laid in the
indictment, because the box was sealed. But being fully satisfied in that
point, and those papers appearing likewise to be true, the counsel for the
King summed up their evidence to the Jury, now appearing on the be-
half of the prisoner.

After which, the Court gave the charge, putting the Prisoner, as well as
the Jury, in mind of the great mischief that such Libels might occasion:
And minded him likewise, that it was within a small matter of High-
Treason; and that, if he had been found guilty of that degree, were not the laws,
and those who managed them, tender of life, &c.

After the charge was given, the Jury withdrew, and returning within
a quarter of an hour, brought in the Prisoner guilty of the High Misdemeanour.

Nov. 16, following, Mr. Johnson's sentence was pronounced by Sir
Franis Biddle, as follows: To pay 500 marks to the King, and to lie
in prison till it was paid; to stand three times in the pillory; on the *Monday*
following, in the *Palace-yard*, *Westminster*, on *Wednesday*, at *Charing-
Cross*; and the 2d day after at the *Royal Exchange*, and to be whipt by
the common Hangman from *Newgate* to *Tyburn*.

After Sentence was put upon him, in order to load him with the greater
ignominy, the Court, on presence of request to the Church, moved, That
before the execution of the sentence, he should be degraded from the order
of Priesthood. This ought to have been done, according to the Canon, by
his own Diocesan, the Bishop of *London*; but that Prelate was then under
a suspension himself, because he would not obey the King's Orders to sup-
press Dr. *Sharp*, now Archbishop of *York*, for preaching against Popery in
his own Parish Church of *St. Giles's* near *St. Paul's*. Dr. *Carver*, Bishop of
Darham, Dr. *Sper*, Bishop of *Bath*, and Dr. *Wintour*, Bishop of *Peter-
burgh*, being then Correspondents for the doctrine of *London*, in the place

* *Gloucester*, *Protestant*, vol. III. c. 17. *Protestant*, c. 9. *MD*, p. 9.

† This is printed in Mr. Johnson's Works, p. 10, 106, which being too long to insert here, the Reader is referred to it.

‡ Mr. Johnson, who was tried on an Inform. &c. in the King's Bench, for writing *Johnson's Address*, and these two Libels, and committed Prisoner to the King's Bench, till he should pay 500 marks, which he was not able to pay this sum. Thus he was condemned of criminality, in the great City of *London*, when he was for the Laws of England condemned by the Judges, who find it more to whipt the Court than to do their duty. See *Journal* of Mr. S. Johnson, p. 7, to his New.

of the fulgured Bishop, were appointed to degrade Mr. *Yafey*, which they performed in the Chapter-house of *St. Paul's*, where *Dr. Sherlock* and other Clergymen attended: *Dr. Selindford*, then Dean of *St. Paul's*, refused to have any hand in it.

When they came to the formality of putting a Bible in his hand, and taking it from him again, he was much affected, and purred with it with difficulty, kissing it, and saying with tears, *that they could not however deprive him of the life and benefit of that sacred Dispensation*. It happened that they were pulled of an accident, in some shipping him of his cask, which, as might be particularly to be feared from, rendered his degradation imperfect, and afterwards forced him his benefice.

On the 11th of December, 1686, the sentence was put in execution; which Mr. *Yafey* endured with as much courage, and as Christian a behaviour as ever was discovered on any such occasion: tho' at the same time he had a quick feel of every stripe which was given him, with a whip of nine cords knotted, to the number of 117.

In the first Parliament after the Revolution, when the House of Commons was preparing an Act of Indemnity, Mr. *Yafey* was advised by his friends to get a full life put into it, that he might have his remedy at Law against facts as had been his illegal oppressions. They seemed to be sensible that they were oppressive, and could not justify what they had done. About that time the Lord Bishop of Durham gave Mr. *Yafey* and his lawyer a meeting, and made his peace with him, to their mutual satisfaction.

Sir Francis Wafers, who presented the *Sentence* against him, fear a relation of *Mr. Yafey's* to tell him a feigned story, that *Sir Francis* lay dangerously ill, and could not die in peace, unless Mr. *Yafey* would forgive him: To which he replied, that he heartily forgave him what injury he had done him. Some few days after, the same person brought *Sir Francis* to Mr. *Yafey*, as he was walking in *Whitechapel*, where *Sir Francis* kissed him, and told him, *That his Christian and kind answer had proved a reviving Cordial to him*. To which Mr. *Yafey* replied, that he heartily forgave the injury done to himself; but as he had been an enemy to his country, he hoped he would be made accountable for it; in being a common baying with him, that he was obliged to forgive his own enemies, but not the enemies of his Country.

The Parliament taking Mr. *Yafey's* case into consideration, resolved, *That in Trinity-Term, 1686, the Judgment given against him in the King's Bench, upon an information for a misdemeanour, was cruel and illegal.*

A Committee was at the same time appointed to bring in a Bill for reversing that Judgment: and being also ordered to enquire how Mr. *Yafey* came to be degraded, and by what authority it was done. Mr. *Clerk*, the Chairman, some days after, reported his case to this purpose:

"That in Trinity-Term, 1686, an information was exhibited against Mr. *Yafey*, in the name of *Sir Robert Senguer*, Attorney-General, for writing and publishing a scandalous and seditious Libel, entitled, *de laudibus et bonis Actibus*, &c. That the same Term they forced him to plead, got a Jury to find him guilty, and *Sir Francis Wafers* pronounced the following Sentence upon him: *To pay five hundred marks to the King, or to be in prison till 'most paid'; To stand three in the pillory, in the Palace-yard, at Charing-cross, and at the Old-banck; and to be whipt by the Common Hangman from Newgate to Tyburn.* The Judges then in Court, were the Lord Chief Justice *Hobart*, *Sir Francis Wafers*, *Sir Robert Wright*, and *Sir Richard Hildway*. That

"apprehending 'twould be a scandal to the Clergy to have so infamous a punishment inflicted on a Minister, they desired Mr. *Yafey* might be first degraded: In order to which, being a prisoner in the King's Bench, in the diocese of the Bishop of *Winchester*, he was summoned to appear on the 20th of November, in the convocation-house of *St. Paul's*, to the diocese of *London*, his Living being within that diocese, and brought thither by *Hendon-Corpus*: where he found the Bishops of *Durham*, *Chichester*, and *Peterborough*, Commissioners to execute the jurisdiction of the Bishop of *London*, during his absence, with some Clergymen, and as many Spectators. A Libel was exhibited against him, charging him with great misbehaviours, tho' some were specified or proved. That Mr. *Yafey* demanded a copy of the Libel, and an Advocate, both which the Bishops denied, and immediately proceeded to sentence, that he should be declared an infame person, that he should be deprived of his Rectory, that he should be a mere Layman, and as Clerk, and be deprived of all right and privilege of Priests: that he should be degraded himself, and of all vestments and habits of Priesthood. Against which proceedings Mr. *Yafey* protested, as being against Law, and the 12th Canon, not being done by his own Diocese. But his protestation was refused, and was also his appeal to the King in Chancery.

"After which, they proceeded to degrade him, by putting a square cap on his head, and then taking it off: by pulling off his gown and girdle, which he demanded as his proper goods, bought with his money, which they refused to find him, but he could not get them till he paid twenty shillings. Then they put a Bible into his hands, which he not parting with readily, they took it from him by force. That on the 22nd of November, the Judgment in the King's Bench began to be executed with great rigour and cruelty: that Mr. *Yafey*, the *Under-sheriff*, took off his cap on the pillory, and put a iron cap on his head, and whipp'd with a whip of nine cords knotted, which was showed to the Commission. That Mr. *Yafey* had also an information exhibited 22nd inst, for the like matter as that against his husband.

"On all which, the Committee came to the following resolutions: which, on the report, were all agreed to by the House, *That the Judgment given against Mr. Yafey was illegal and cruel: That the Ecclesiastical Commission was illegal, and consequently the judgment of the Bishop of London, and the authority committed to the three Bishops null and illegal. That Mr. Yafey was not being degraded by his own Diocese, if he had desired of it, was illegal: That a Bill be brought in, to reverse the Judgment, and to declare all the proceedings before the three Bishops null and illegal. And that an Address be made to his Majesty, to recommend Mr. Yafey to some Ecclesiastical Preference, suitable to his services and sufferings.*"

The House likewise ordered, That in the said Bill the proceedings upon the Ecclesiastical Commission should be declared void.

The House presented two Addresses to the King in behalf of Mr. *Yafey*: But tho' his Majesty was incalculable enough to have complied with their request, Mr. *Yafey* could never obtain any Church-Preferment. Mr. *Yafey*, however, being a man of such merit, did not pass altogether without a reward: for the King gave him three hundred pounds a-year out of the Exchequer, for his and his son's life, besides a thousand pounds in money, and likewise bestowed a place of about a hundred pounds a-year on his son.

XLI. The Trial of Rowland Walters, Dearing Bradshaw, and Ambrose Cave, Gent. (for murdering of Sir Charles Pym, Bart.) at the Sessions held at the Old-Bailey, on Friday the first day of June 1688, before the Right Honourable Sir *John Shorter*, Knt. Lord-Mayor of the City of London, and Sir *Bartholomew Shower*, Knt. Recorder of the same City; together with others his Majesty's Justices of the Peace for the City of London, and County of Middlesex.

Clerk. CRYER, make Proclamation.

Crier. Oyes, Oyes, Oyes!

Clerk. Keeper of Newgate, bring the Prisoners to the Bar.

(Which was done).

Clerk. You the prisoners at the Bar, those men whom you shall hear called, and personally appear, are to try between our sovereign Lord the King, and you who are arraigned, upon your several lives and death: if you shall except against any one of them, you must speak before they be sworn.

Clerk. Crier, call Henry Dyer.

The Jurors (sworn) are as followeth:

Henry Dyer,	Richard Cliffe,	John Hill,
Giles Bagge,	Samuel Burge,	Obadiah Whitman,
Matthew Forster,	William Filmer,	John Read,
Timothy Wafers,	John Frith,	Francis Willis.

Who were all sworn.

Clerk. Crier, count these, twelve good men and true.

Clerk. Crier, make proclamation. (Which was done).

Clerk. You Gentlemen of the Jury, last upon the Prisoners at the Bar, and hear in their charge a tryal indicted by the names of Rowland Walters, Dearing Bradshaw, and Ambrose Cave, Gent. for that they met having the gift of God before their eyes, but being incited and seduced by the Devil, and their own wicked Hearts, on the fourth day of May, in the fourth year of the reign of our sovereign Lord King James II. in the Parish of *St. Nicholas Cole-Abby*, in and upon Sir Charles Pym, Bart. feloniously, wilfully, and of their malice aforethought, did make an assault; and that he the said Rowland Walters, having then and there on his right-bow, a certain Rapier made of iron or steel, of the value of about 5*l*. and how the said Sir Charles Pym in

and upon the right side of him the said Sir Charles Pym, a little above the right eye, did strike and thrust in afore-said, giving him the said Sir Charles Pym, a little above the right eye, a mortal wound, the breach of one inch, of the depth of ten inches: and that they the said Dearing Bradshaw, and Ambrose Cave, were present, aiding, abetting, and assisting him the said Rowland Walters, in the perpetration of the said wilful murder of him the said Sir Charles Pym. In that they there, the prisoners at the Bar, with malice aforethought, did intentionally kill and destroy, and wilfully murder him the said Sir Charles Pym, against the peace of our Sovereign Lord the King, his Crown, and Dignity, and against the form of the Statute in that case made and provided. Upon this Indictment they have been arraigned, and have answered should not Guilty, and for their Trial, have put themselves upon God and their Country, which Country you are. Your Jurys is to enquire, whether they, or either of them committed this felony and murder as afore-said; if you find them, or either of them, guilty of the said wilful murder, you are to remove such goods and chattels they, or either of them, had at the time of the committing of the said wilful murder; but if you find them not guilty, you are to say so, and hear your evidence.

Mr. *Walters*. My Lord, I humbly desire these Gentlemen may be tried before me.

Count. That cannot be, Mr. *Walters*, because you are all three put into one Indictment.

Count for the King, My Lords, and you Gentlemen of the Jury, I am here retained a Counsel for the King, against the Prisoners at the Bar, who all three stand indicted for the murder of Sir Charles Pym, Bart. in the Parish of *St. Nicholas Cole-Abby*, thrusting him through the body near the right eye, giving him a mortal wound, of which he then and there instantly died. The other two prisoners stand indicted for aiding, abetting, and assisting him the said Walters in the said murder.

Another

And so Count for the King. My Lords, this Murder fell out on the fourth day of May last, after this manner. We the said Sir Charles Pym, our Mr. Merrydell, Mr. Noddy, and Sir Thomas Middleton, and others, dined at the Swan-Tavern upon Fish-street; after they were come into the house they were a while after which the Fellows in the bar came into the house, and took another room to dine of beef and other things. But one of Sir Charles's company desired to have a plate of it; upon which Mr. Clough told them these Gentlemen had bespoke it for dinner; but he said he would get them a plate of it, which was first up, and ordered to be reckoned into Mr. Waters the butcher's bill. After dinner they drink their healths, and returned their thanks for the beefs, and towards the evening Sir Charles Pym and his friends came down stairs, and met the gentlemen at the bottom, and Mr. Caw asked them how they liked the beef that was first up; upon which one in the company answered, and told them, They did not feed it, for they had paid for it. Upon which further words arose, and Mr. Bramble drew his sword, and fell upon Sir Charles Pym; but he got out into the street. After which Mr. Waters came forth, and plucked Sir Charles Pym by the arm, and forced him to fight with him, saying, Here is my hand, and here is my sword; and so forth with him in the street, he received this mortal wound, and fell down dead. After this, Mr. Waters took him by the nape of the neck, and dashed his head upon the ground, and cried out, God damn you, you are do! and fled forth, Let the fowls alone on his body. My Lord, this shall be proved to be done without any manner of provocation; and if I hope you, Gentlemen of the Jury, will find him guilty of wilful murder.

Clark. Call Mr. Merrydell, Mr. Noddy, Mr. Palmer, and Mr. Bridgen. *(They were sworn.)*

Mr. Merrydell. My Lord, on the fourth day of May last, on a Friday, Sir Charles Pym, myself, and three Gentlemen, who in Court, came to dine at the Swan-Tavern on Fish-street. We called for meat, and Mr. Clough, the man of the house, told us, we might have fish, for he had no meat, but what was bespoke by Mr. Waters and his company. We desired him to help us to a plate of it, if it might be got, which we had brought up stairs; after dinner we drank the Gentlemen's healths to wit, and returned thanks for it. A while after Sir Thomas Middleton went away, and about an hour after that, or thereabouts, Sir Charles Pym and the rest of us came down to go away; and when we were in the entry, Mr. Caw met us, and asked Sir Charles how he liked the beef that was first up, who answered, We did not know you sent it, for we have paid for it. Then the boy that kept the bar told us, that he did not reckon it the bill; upon which Mr. Caw seemed to take it ill: But, my Lord, I cannot be positive whether Mr. Bramble and Mr. Palmer were at any words. Then I took Mr. Caw to one side into the entry, and he thought that I had a mind to fight him, but I did what I could to make an end of the quarrel. *(Upon which the Court highly commended Mr. Merrydell.)*

Clark. This was in the entry, but where was Sir Charles Pym?

Mr. Merrydell. He was then in the entry.

Clark. Where was Mr. Waters?

Mr. Merrydell. He was at the door, my Lord; I well cannot swear positively to any particular passage as to the murder; but Mr. Waters called Sir Charles Pym rogue, and gave him very ill words, and I saw him take him by the neck, and forced his head downwards, and said, God damn him, he is do, to the bell of my remembrance, my Lord. Then, I took Sir Charles up in my arms, and pulled the sword out of his hand, and then Mr. Waters fled, God damn him, let it fly in his guts, or in his body, or words to that effect.

Clark. Was Mr. Caw or Mr. Bramble at the place where Sir Charles fell?

Mr. Merrydell. No, my Lord, they were in the entry (cuddling there).

Clark. What came of Mr. Waters afterwards?

Mr. Merrydell. My Lord, he lay'd a little till I had pulled the sword out of his body, then he ran away.

Clark. Did they draw their swords in the entry?

Mr. Merrydell. I cannot tell that?

Clark. Did you for them draw their swords?

Mr. Merrydell. I cannot say Sir Charles Pym's sword was drawn, but I saw Mr. Waters draw his sword in the street.

Clark. Do you know whether Mr. Waters was wounded or no?

Mr. Merrydell. I do not know that, for I did not see the wound given.

Clark. Mr. Waters, will you ask him any questions?

Mr. Waters. Yes, my Lord: Mr. Merrydell, what did you say to Sir Charles Pym in the Fish-monger's shop? Did you not say, Go, and fight him, and I will be your second?

Mr. Merrydell. My Lord, I do not remember one word of that.

Clark. Mr. Merrydell, were you in any Fishmonger's shop?

Mr. Merrydell. Yes, my Lord, I was there; but I do not remember one word between Mr. Merrydell and Sir Charles, as to, as I hope for salvation, I did not say thing, and that's all I have to say.

Clark. Cryer, call Mr. Noddy.

Mr. Noddy. My Lord, I went and met with these Gentlemen that dined with us at the Swan-Tavern, and we had fish and two beef marrow-bones, and a plate of beef for dinner; and when we came down to go away, these Gentlemen met us, and said, God damn you, how did you like the beef? which raised a quarrel among us; but immediately, after I thought it was all over, I saw Mr. Waters run Sir Charles Pym through.

Clark. Was his sword drawn?

Mr. Noddy. Yet he drew his sword.

Clark. Where was Mr. Bramble?

Mr. Noddy. I cannot tell where he was dimly; but, my Lord, I heard Sir Charles Pym say nothing to Mr. Waters.

Clark. Cryer, call Mr. Palmer.

Mr. Palmer. My Lord, after the reckoning was paid, we came down stairs, and called for a coach, and because it rained, there was none to be had, and these Gentlemen followed us into the entry, and to words to the same purpose as already said between them; after which, I met Mr. Bramble, and we fell out on the Fish-monger's shop.

Clark. What began?—Mr. Palmer, I know not, I cannot remember that.

Clark. Were you not in drink?

Mr. Palmer. My Lord, we drank nine or ten bottles among five of us; Vol. VII.

after which Mr. Bramble and I drew out swords, and then Mr. Merrydell came and took him away from me into the entry, and in the next time, while we were talking in the entry, the business was done.

Clark. What your words put up again?

Palmer. I had put up mine.

Clark. Did you take notice of what passed between Mr. Waters and Sir Charles Pym?

Mr. Palmer. I heard nothing of high words.

Clark. Yes, yes, it was all about the beef.

Clark. Cryer, call for Mr. Prosser, the Bar-keeper.

Prosser. My Lord, I made the bill for the reckoning.

Clark. Did you put the beef upon the bill?

Prosser. No, I did not; when they came down stairs, the coach was first for them, viz. for Sir Charles Pym and his company, and the reckoning was paid. When Sir Charles Pym and the rest of his company came down into the entry, Mr. Waters came out of the room, &c., and I heard them argue about their dinner, and they came to me, and asked me what was to pay for beef, and I told them nothing.

Clark. Did you for the man killed?

Prosser. My Lord, I did not see him killed, nor I.

Clark. Who was it that quarrelled with the coachman?

Prosser. My Lord, Mr. Noddy quarrelled with the Coachman about his flying; the Coachman refused going with him, because his Horses were hot.

Clark. Cryer, call Mr. Bramble.

Mr. Bramble. My Lord, between eleven and twelve o'clock in the morning on the fourth of May last, Sir Charles Pym came to Mr. Clough's door in a coach, and asked him what he might have for dinner; a while after he might have a mutton and some fowls, and I sold a mutton to Mr. Clough; for Sir Charles went to the Exchange, and I saw no more of him till I saw him killed. While I was in the house, came in one Mr. Allen and others, to enquire for Sir Charles Pym, and Mr. Clough told them that he had bespoke a dinner, and was gone to the Exchange, on a mutton and some fowls; but one of the Gentlemen desired a bit of the beef that was first up, for Mr. Clough said he would get a plate for him. So I went to the door, and the Coachman came, and his horse's being hot, he desired to go away because his said; but Mr. Noddy put his foot upon the coach, and the Coachman after pulled his Bay out of the coach, and drove away. And after that, I saw Mr. Caw and others come to the door, and pulled each other into the next shop, and were at very high words; and so afterwards they went into the entry again, and Sir Charles Pym and Mr. Waters came out without the door, the latter of which said, Here is my hand, and here is my sword; but they returned back again into the Tavern, and within two minutes came out again, and I saw Mr. Waters thrust Sir Charles Pym through his back.

Clark. Did you for him do any thing to him after he was down?

Mr. Bramble. No, my Lord, I did not.

Clark. Did you see any thing of the sword that was the kernel, and drew his sword, and found upon his girth, and then you say, that you saw Sir Charles Pym come out with his sword drawn? Was his sword drawn?

Mr. Bramble. I did not see him draw it; but it was drawn.

Clark. Where did he receive his wound?

Bramble. Within a foot of the kernel; I was but a little way off, but I did not see him beat his head against the ground.

Clark. Cryer, call Mr. Fletcher.

Mr. Fletcher. My Lord, on Friday in the evening on the fourth of May, I was going by the Tavern-door about seven o'clock at night, and I heard a noise, and a talking of going to the church-yard of the town to be merry; and turning myself back to hear further, I saw Mr. Waters come out of the door and draw his sword, and Sir Charles Pym came out, and drew his sword; and presently Mr. Waters's sword was through Sir Charles Pym's body almost a foot, and he fell down crinkling immediately; and when he was down, I saw Mr. Waters hit him in the kernel, and rake him by the nape of the neck, and after that, God damn him, he fell down flat in his body; and afterwards I saw Mr. Merrydell pull the sword out of his body.

Clark. Did you see Mr. Bramble there when Sir Charles fell?

Mr. Fletcher. My Lord, I saw none there but Mr. Waters and Sir Charles, they were out of doors, and the rest were in the entry.

Mary Webb and Sarah Webb were called, who could give little or no evidence as to matter of fact, as concerning the death of Sir Charles; and being innocents, could not tell what they might have seen.

Clark. Cryer, call Mr. Allen.

Mr. Allen. I know but very little of the matter, but that there was a plate of beef first up to us, but we knew not from whence it came, till afterwards the Drunken bought up some of the Gentlemen's butter half an up; after which, we drank their healths, and returned them thanks for it. After which, I went to the Coffee-house, and had my food about half an hour, and presently heard a cry of murder, and I came down, and saw Sir Charles Pym lying with a wound in his body, and another in his head, but I did not know who it was, nor them; but I asked who did this business, and exhorted the people to take them as soon as they could.

Clark. I think you said that Mr. Bramble's sword was drawn?

Mr. Allen. Yes, it was, but I believe that he did not know that Sir Charles Pym was killed.

Mr. Bramble was called, but could depose nothing material.

Clark. Mr. Waters, you have been here indicted, together with Mr. Bramble and Mr. Caw, for the murder of Sir Charles Pym, but I have heard you have heard what charge hath been laid against you, which hath been a very strong one, and now it behoves you to make your defence as well as you can.

Mr. Waters. My Lord, I was no way the occasion of the quarrel; when I came thither, I asked for some meat, and having not eaten all the day before, we had a piece of beef, of which Sir Charles Pym and his company had none, who afterwards drank our healths, as I was informed. For my part, my Lord, I never saw the Gentlemen hit in any ways; and I am very sorry it should be my misfortune to kill him in the quarrel. Sir Charles Pym asked me, saying, God damn you, Sir, what have you in do to make it? I went presently, my Lord, to

a Filibanger's, where Mr. Mirrival was, and Sir Charles Pym came, and Mr. Mirrival said to him, Sir Charles, Down you, Sir, go and fight him, and I will be your second. And presently they came upon me, and I drew my sword in my own defence, and he ran me eight inches into the thigh, and at the same pail, I had the misfortune, my Lord, to run him into the body.

Coat. Would you ask Mr. Mirrival any question?

Waters. Yes, my Lord. Mr. Mirrival, did you see me strike Sir Charles's head upon the ground?

Mirrival. No, Sir, I did not see that; neither did I say any such thing in the Filibanger's shop, as to bid Sir Charles fight you.

Coat. Cryer, call Matthew Perna.

Perna. My Lord, all that I saw of the business was, that when the Coachman was called to the door, Mr. Nash came and threatened him if he did not fly; then Mr. Cave and Mr. Bradshaw were in the entry, and I heard them discourse about beef, and some of them said, You give us beef, and we will pay for it; and there was answer made, they were Ruffals that said so, for that did not. There was one of the Gentlemen in our shop sitting of us, but, let me come to him, I will tell him.

Coat. Do you know the man?

Perna. No, I do not know who it was.

Mr. Waters. It was wounded at the same time, my Lord.

Coat. That is admitted of.

Mr. Waters. Let him be asked, whether I beat the head against the ground.

Perna. No, my Lord, I did not see him do that.

Coat. He had a wound, the question is how he came by it; whether he might not fall upon it himself, it was a flaying wound?

Mr. Waters. Yes, my Lord, let Sir Charles's sword be sent, all blood. [But that gave no satisfaction on either side.]

Coat. Mr. Bradshaw, what have you to say for yourself?

Mr. Bradshaw. My Lord, I was there, but I know nothing of the death of Sir Charles Pym, nor how he came by it; there were some words said amongst us, and I desired them to cease, for fear a further quarrel should ensue upon it.

Coat. Mr. Cove, what have you to say?

Mr. Cove. I know no more of the matter than this Gentleman saith: I saw not Sir Charles Pym killed.

Coat. Cryer, make proclamation.

Cryer. All people are commanded to keep silence upon pain of imprisonment.

Then Mr. Baron Juyner turned up the evidence as followeth:

Baron Juyner. Gentlemen of the Jury, you have three persons indicted, viz. Mr. Waters, Mr. Bradshaw and Mr. Cove, for murdering Sir Charles Pym, Bart. and have had several witnesses called for the King, against the prisoners at the Bar; the first of which was Mr. Mirrival; and he gives you this account, and 'tis all that each and every are given, and it agrees on all sides, and he tells you, that all these Gentlemen were to dine at Mr. Gladly's, at the Swan-Tavern in Old Fish-street; and that they were there at dinner, it is very plainly proved. And being there, it seems that some of these Gentlemen had bought a fifth-denier, some fells, and had some, viz. a plate of beef, and he tells you also, that when dinner was over, some words did ensue concerning the reckoning, and that one of the companies were got down stairs in the entry, where a further quarrel did ensue. Mr. Mirrival tells you further, that Mr. Bradshaw and he quarrelled, so there was a scuffle in the entry, after which things were pretty well quieted there: it comes Mr. Waters and Sir Charles Pym, and while Mr. Mirrival was securing the first quarrel, they, viz. Sir Charles Pym and Mr. Waters were got out at the door, and Sir Charles was flopping down, and Mr. Waters was pulling upon his neck and throwing him down.

So said Mr. Mirrival, and when he went to take the sword out of his body, he saw him a dying man.

The next evidence was Mr. Nash, and he observes to you, that one of the Gentlemen did say, that the quarrel was not intended against them; and he gives an account of the story, how that it was about the beef; how that Sir Charles was run through by Waters, but he did not let him knock his head against the ground.

Mr. Nash gives the like account, and saith, that whilst they were a scuffling in the entry, Sir Charles was killed at the door.

The next evidence is the Drawer, who tells you of a squabble that Mr. Nash had with the Coachman at the door, and how that there was leftward of the Gentlemen behind, and that the Coachman was unwilling to wait because it rained, his horses being hot, they might catch cold; whereupon

he put his foot-boy into the coach, and threatened the Coachman if he went away: this was before they left out about the meat.

The next evidence was one Mr. Bradshaw, he gives the same account, how that a quarrel was amongst them, and how that Mr. Waters was on one side of the kennel, and Sir Charles Pym on the other side, and there they stood with their swords drawn; and as soon as they came close, they wounded each other, and Sir Charles Pym was killed; but he did not let his head knock against the ground.

Comes Fletcher, my Lord Mayor's Officer, and he tells you, that he was going by the door house into Broad-street, and he saw a man that was wounded flopping down; and he saw that Mr. Waters took him by the nape of his neck, and knock'd his head against the ground, and heard him swear, Let the sword stick in him. Sarah Webb and another woman speak it to be in the like manner; and one of them talks of Mr. Waters's pulling Sir Charles Pym out of the entry before he would come out.

All of all, Gentlemen, here was Mr. Allen, one of their company, who went away to the Coffee-house, and hearing murder cried out, he came and found Sir Charles Pym killed, and quite dead. This, Gentlemen, is the evidence that you have heard as near as I can give it you.

Now, for the prisoner Mr. Waters, he would have you believe, as if Sir Charles had struck him before he drew his sword; but he has not proved it: likewise speaks of Mr. Fletcher, but he does not remember that Sir Charles Pym struck him before he drew. But so it was, Gentlemen, there was a quarrel, in which that honourable and worthy Gentleman, Sir Charles Pym, lost his Life.

Now for Mr. Bradshaw, he confesseth that there was a quarrel; but he saith, that he did not know when or how Sir Charles Pym was killed; and for Mr. Cove, I do not find any thing objected against him, nor either of them.

Now, Gentlemen, I tell you what the Law is in this case: First of all, to begin with Mr. Waters, so as it seems with Mr. Waters, so you may be guided to deal with the other two. Now it hath not been made appear by any of the evidence that you have heard, that there was any premeditated malice between them, for they were never in company before, and knew not each other; so that there could be no manner of malice from him in particular.

The next Rep. Gentlemen, it is here is nothing that can impute a general malice upon Mr. Waters, for if I had no Jells to kill a man, and kill another with whom I do not quarrel, that cannot be any premeditated malice, but I rather think that there was a little heat of wine amongst them: and this whole action was carried on by nothing else but by a hot and sudden frolick, and I am very sorry that it should fall upon such a worthy Gentleman as he was. And if there was no malice premeditated, then he can be found guilty of nothing but Manslaughter; and as for the other two, they may be totally acquitted. If I have erred in the summing up of these evidences, or mistaken myself in any point, here are my Brothers to help me.

Then the Gentlemen of the Jury withdrew for about the space of half an hour, and returned into Court upon a scribble of conscience; one amongst them spoke to the Court as followeth:

Juryman. My Lord, we are not satisfied in our consciences concerning the death of Sir Charles Pym; we find in it malice fore-thought, because after he had run the sword through his body, he was not satisfied with that, but must knock his head against the ground; so we do take it, that the said Sir Charles Pym was maliciously murdered.

Mr. Justice Aldous. Gentlemen of the Jury, I shall endeavour to direct you in this case, and tell you what the Law saith. That it cannot reach a man's life, when no premeditated malice is proved; that there is none proved, appears very plain to me, and I hope also to you, because it hath been proved that these Gentlemen, viz. the prisoners at the Bar, and the deceased, had never been in company before.

Gentlemen, you are upon your oaths to serve the King as Jurymen; and I, as a Judge, am upon my oath to try the cause as well on the behalf of the living as the dead. So that upon the whole matter, Gentlemen, this can be called nothing else but a storm, an unprovoked tempest that such men are subject to; so that it does not reach premeditated malice, but subsequent passion; which fell passion was continued to that height, that Sir Charles Pym in the midst of it lost his life.

Then the Jury went out again for about a quarter of an hour; and returning, brought in Mr. Waters guilty of manslaughter; but the other two were acquitted.

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Number XII.

- The Proceedings before the Lords of the Articles, &c. in Scotland, against Charles Maitland of Hahon, Treasurer-Depute, for Perjury, in having given a false Testimony, at the Trial of James Mitchell.* 426

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A COMPLETE COLLECTION OF TRIALS, &c.

XLII. *Proceedings in Parliament upon the CASE of JAY and TOPHAM; and the Defence made by Sir Francis Pemberton, and Sir Thomas Jones, for their Judgment given therein.* 1 Will. & Mariz, 1689.

MR. Topham, Sergeant, attending the House, having by his Petition complained, That he had been a great Sufferer by several Prosecutions at Law for executing the Orders of the House, and that having pleaded those Orders to the Jurisdiction of the Court of King's-Bench, his Pleas had not been allowed, but Judgment was given against him. The House referred the Examination and Consideration of this Matter to the Committee of Privileges. Accordingly the Committee met and examined the Matter.

Sabbath 6th July, 1 Will. & Mar.

Col. Byrd reported the Fact as it appeared to the Committee, with the Opinion of the Committee thereupon, with which the House agreed, in these Words:

Resolved,
"That the House doth agree with the Committee, That the Judgment given by the Court of King's-Bench in *Eagle* Term, 22 Car. II. *Exin*, upon the Plea of *John Topham* (at the Suit of *John Jay*), to the Jurisdiction of that Court; and also the Judgments given against the said *Mr. Topham*, at the Suit of *Several Parties*, *John Hillier*, *Thomas Stepling*, *Richard Blah*, *John Nalton*, *Thomas Herbert*, *Nathaniel Ross*, &c. and *Ruford Herwege*, are illegal, and a Violation of the Privileges of Parliament, and pernicious to the Rights of Parliament."

The House being informed, That Sir Francis Pemberton and Sir Thomas Jones were Judges of the King's-Bench at that Time, ordered them to stand upon *Wednesday* next following.

Monday 10th July, 1689.

The House being informed, That Sir Francis Pemberton and Sir Thomas Jones attended, pursuant to the Order of the House; Sir Francis Pemberton was first brought in, and Mr. Speaker spoke to him to this Effect:

Mr. Speaker. The House has been acquainted, there was an Admon brought in the King's-Bench in *Eagle* Term, 22 Car. II. by one *Jay* against *Sergeant Topham*. To which Admon he pleaded the Jurisdiction of this House; and that it proceeded to a Demurrer, and the Plea was over-ruled by you as Chief-Justice; the House has sent for you to know upon what Ground you did it.

Sir Francis Pemberton. Sir, I know nothing of this Admon, I have been out of the Court now six Years this Vacation. If I saw the Pleadings, it may be I might give you some Account of it, but I cannot remember for many thousand Admons as were brought at that Time. But if you will let me know what the Charge is, I do not doubt but I can give you a good Account of it. You say, Sir, he pleaded the Jurisdiction of this House.

Mr. Speaker. That is, there was a Plea to the Jurisdiction of the Court of King's-Bench, That it was done by Order of this House; so it censures the Jurisdiction of this House.

Sir Francis Pemberton. That is quite new to me, for I know not what I was sent for. You were pleased to summon me to stand, but I did not know for what, nor do I remember any such Admon brought by *Jay*, I remember only an Admon was brought by *John Jay* against *Topham*. And I remember there was a Motion made to us for a new Trial in the Case, where there was good Damage given. And we did give them a new Trial, for we thought it necessary and unreasonable Damages.

Mr. Speaker. There were six Admons brought, but that which the House would be informed of, is the Admon that was between *John Jay* and *John Topham*.

Sir Francis Pemberton. Under Favour, I can say nothing to this Admon, but that I can say, if the Defendant should plead he did arrest him by the Command of this House, and should plead that to the Jurisdiction of the Court of King's-Bench (I can say nothing to this particular Action, but) I think, with Submission, I can fairly say, that such a Plea ought so to be over-ruled, and I take it, the Law is very close to that; but also what I said in my Charge, with respect to this particular Action, it you please to give me some Time to look into the Records of the Court.

Mr. Speaker. The House will consist of it, if you please to withdraw, and then give your Reason.

Sir Francis Pemberton withdraws.

Sir Thomas Jones brought in.

Mr. Speaker. Sir Thomas Jones, the Clerk of the House sent for you to shew: They have been acquainted, that in the Time of King Charles the

Second, in the thirty-fourth Year of his Reign, there was an Admon brought by one *Jay* against *Mr. Topham*, that then was, and now is, Sergeant of the House of Commons. To which he pleaded, That what he did was by Order of the House, and thus he pleaded to the Jurisdiction of the Court of King's-Bench at that Time; they desire to know if you gave the Judgment, and upon what Reason?

Sir Thomas Jones. 'Tis so long ago I do not remember it, 'tis above seven Years ago; and I had not Notice at all of the Cause I was recommended to attend you upon; whether I did give any such Judgment or no, it will appear by the Record itself.

Mr. Speaker. We have examined the Officers, and they give us an Account, That Sir Francis Pemberton was Chief Justice, and you another Judge then.

Sir Thomas Jones. I was a Judge of the Court at that Time, but I cannot certainly say, we did give Judgment to over-rule the Plea; I hope, if we did, it was according to Law.

Mr. Speaker. Well, Sir, you may withdraw, if you please.

Sir Thomas Jones withdraws.

Sir Francis Pemberton brought in again.

Mr. Speaker. Sir Francis Pemberton, the House took Notice when you were in before, you said, when an Order of this House was pleaded to the Jurisdiction of the Court of King's-Bench, by the Law it ought to be over-ruled; and that you could give those Reasons that would satisfy the House it was so, they expect you should give them now.

Sir Francis Pemberton. Mr. Speaker, as to this Question concerning this particular Cause I know nothing, I know not what the Pleading was.

Mr. Speaker. The House does not expect any Thing of your Answer as to this particular Cause, but you seemed to make your Answer general, and therefore they desire to hear what you can say as to your general Assertion.

Sir Francis Pemberton. To satisfy the House of all together, I would desire to look into this particular Cause, for I do not know whether I was Judge or not then: If they will give me some Time, I will give them an Account of the whole.

Mr. Speaker. The House expects to have some Account now of what you said, that a Plea to the Jurisdiction of the Court of King's-Bench ought to be over-ruled.

Sir Francis Pemberton. If they please, since they charge me with this particular Cause, I will answer to the whole together.

Mr. Speaker. Well, Sir, if you please to withdraw.

Sir Francis Pemberton withdraws.

He is brought in again.

Mr. Speaker. Sir Francis Pemberton, the House did take Notice that you did affirm here, that if an Order of this House was pleaded to the Jurisdiction of the Court of King's-Bench, that it ought to be over-ruled, and that you take the Law to be clearly so, and that you thought you could satisfy the House in that Point. This is a general Assertion, and they expect nothing as to the particular Cause; but they do require you, that you would give them your Reasons why you maintain this Opinion.

Sir Francis Pemberton. The Question that was put to me by yourself was a new Question to me: I heard nothing concerning it, nor did I know what it was, that would be put to me. I did tell you my present Apprehensions of the Case you put, I did not speak of an Order of the House in general, but the Order that was in this Case, of the Order of taking him into Custody. That was the Question proposed to me. I had no Reason to speak of the Orders of the House in general, I can give no Account of them, but 'tis good to see, Whether the Order for taking him into Custody was pleasurable to the Jurisdiction? I did apprehend by the Law it was not pleasurable: If I was understood in any other Sense, I beg your Pardon, for I spoke it *quod vis*. The Case of *Jay* vs. *the*, which was, is being the Order of the House to take him into Custody, that being pleaded to the Jurisdiction of the Court of King's-Bench, whether that ought to be allowed or not? Therefore if it be looked upon as if I spoke in general, I did not adapt my Words as I should, but that is my Meaning.

Mr. Speaker. That comes much to the same Purpose, under Favour: You say, an Order of this House being pleaded in this particular Cause to the Jurisdiction of the King's-Bench, that Order ought to be over-ruled.

† *See Verdict's Copy in Sir Tho. Jones's Reports, p. 208.*

XLIII. Proceedings before the House of Lords, (from Jan. 7, 1691 to the 17th of Feb. following) between the Duke and Duchess of Norfolk, upon the Duke's Bill, Intituled, An Act to dissolve the Marriage, &c. 3 W. & M.

The 7th of January the said Bill was lodged in the House of Lords.

The 8th of January.

THE Dukes of Norfolk having received Intimation, that the Duke of Norfolk was this Day offering a Bill to the House of Lords, for dissolving the Marriage between them, and that the same was under debate before their Lordships, he was advised to present the following Petition.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The humble Petition of Mary Duchess of Norfolk, Sheweth,

THAT your Petitioner being informed, that the Duke of Norfolk is at this time offering a Bill to your Lordships, for dissolving the Marriage between him and your Petitioner,

Your Petitioner humbly prays he may be heard by your Lordships, before such Bill be received.

And your Petitioner will ever pray, &c.

M. Norfolk.

Upon which Petition, their Lordships were pleased to make the following Order, viz.

The Fourth 8 January, 1691.

A Bill having been offered to this House, on the Behalf of the Duke of Norfolk, to dissolve the Marriage between the said Duke and his Dutcheſs, it was ordered by the Lords Spiritual and Temporal in Parliament assembled, That Her Grace shall have Notice thereof, and may be heard by her Council, at the Bar of this House, on Tuesday next at twelve of the Clock, when she hath to object against the receiving the said Bill. At which time the said Duke may also be heard by his Council, for the said Bill, if he shall think fit.

Munk, Jefeon, Cler. Parliamentar.

The Merits 10 January, 1691.

After hearing Counsel this Day, at the Bar, when they could object for her Grace the Dutcheſs of Norfolk, against the receiving of a Bill offered by his Grace the Duke of Norfolk, to dissolve the Marriage between him and his Dutcheſs, it was the Council of his Grace the Duke of Norfolk presenting the said Bill. And after Consideration of what was offered by Counsel, on either Side, and a long Debate thereupon:

This Question was put,

Whether the Duke of Norfolk's Bill should be received? It was resolved in the Affirmative.

Which Bill is as followeth:

An Act to dissolve the Marriages of Henry Duke of Norfolk, Earl Marshal of England, with the Lady Mary Mordaunt, and to enable the said Duke to marry again.

Enacted, as Henry Duke of Norfolk, and Earl Marshal of England, having been married to the Lady Mary Mordaunt, hath made full Proof that his said Wife is guilty of, and hath committed, Adultery on her Part: And forthwith as the said Henry Duke of Norfolk hath no Issue, nor can have any possible Expectation of Posterity to succeed him in his Honours, Dignities, and Estate, which the said Marriage be declared void by Authority of Parliament, and the said Duke be enabled to marry any other Woman: The King and Queen's Most Excellent Majesties, upon the humble Petition of the said Henry Duke of Norfolk, having taken the Premises into their Royal Consideration, for divers weighty Reasons, are pleased that it be Enacted, and be it Enacted, by the King and Queen's Most Excellent Majesties, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Marriage between the said Henry Duke of Norfolk, and the said Lady Mary his Wife, shall from henceforth be null and void, and be by Authority of this present Parliament Declared, Adjudged, and Enacted to be null and void, to all Intent, Construction, and Use whatsoever. And that it shall and may be lawful to, and for the said Henry Duke of Norfolk, at any time or times hereafter, to contract Matrimony, and to marry (as well in the Lifetime of the said Lady Mary, as if she were naturally dead) with any other Woman or Women, with whom he might lawfully marry, in case the said Lady Mary was now living: And that such Matrimony, when had and celebrated, shall be good, just and lawful Marriage, and so shall be adjudged, decreed and taken, to all Intents, Constructions and Purposes. And that all and every Child and Children born in such Matrimony shall be deemed, adjudged and taken to be born in lawful Wedlock, and to be Legitimate and Inheritable, and shall inherit the said Duchy of Norfolk, Office of Earl Marshal of England, and all other Earldoms, Dignities, Honours, Honours, and Titles of Honour, Lands, Tenements, and other Hereditaments, from and by their Fathers, Mothers, and other Ancestors, in like Manner and Form, as any other Child or Children, born in lawful Matrimony, shall or may inherit, or be inheritable, according to the Course of Inheritances used in this Realm; and to have and enjoy all Privileges, Preeminences, Benefits, Advantages, Claims and Demands, as any other Child or Children born in lawful Wedlock may have or claim by the Laws or Customs of the Kingdom. And be it further Enacted, That the said Henry Duke of Norfolk shall be intreated to be Tenuant, by Courtesy, of the Lands and Inheritances of such Wife, whom he shall hereafter marry: And such Wife as he shall so marry shall be intreated to a Dower of the Lands and Tenements of the said Henry Duke of

Norfolk, and of such Estate wherof she shall be Dowerable, as any other Husband, or Wife may, or might claim, have, or enjoy: And the Child or Children, born in such Marriage, shall and may derive and make Title, by Descent, or otherwise, to, and from any their Ancestors, as any other Child or Children may do, by Law, Statute, Restraint, Prescription, Ordinance, Canon, Constitution, Prescription or Custom, had, made, exercised, or used to the contrary of the Premises, or any of them, in any wife notwithstanding. And be it further Enacted, by the Authority aforesaid, That the said Lady Mary shall be, and is hereby barred and excluded of, and from all Dower and Thirds, and of and from all Right and Title of Dower and Thirds, unto, or out of any the Honours, Manors, Lands, or Hereditaments of the said Duke; and that all Concessions, Joinders, Settlements, Limitations and Creations of Uses and Trusts, of, unto, or out of, any Honours, Manors, Lands or Hereditaments, at any time heretofore made by the said Duke, or any of his Ancestors, or Trustees, unto or upon, or for the Use or Benefit of the said Lady Mary, or any the Issue of her Body, or for raising, discharging, or counter-securing any the Manors, Lands, or Hereditaments of the said Lady Mary, or any of her Ancestors, shall be from henceforth utterly void, and of none Effect: And all and every the said Honours, Manors, Lands or Hereditaments of the said Duke, or any of his Ancestors or Trustees, shall from henceforth remain and be, and for, the Use and Benefit of the said Duke, and such other Person or Persons, and for such Estates and Interests, and in such Manner and Form, as if the said Lady Mary were now naturally dead, without any Issue of her Body. And also, that all Limitations and Concessions, of any Use, Estate, Power or Trust, made by any of the Ancestors of the said Lady Mary, unto or for the Use or Benefit of the said Duke, his Heirs or Assigns, out of any the Manors, Lands, or Hereditaments, or any of the Ancestors of the said Lady Mary, shall be from henceforth void, and of none Effect.

REASONS offered to the Lords in Parliament, for receiving the before-mentioned Bill of Divorce, on the Behalf of his Grace the Duke of Norfolk.

THESE are having a Sentence for a Separation from the Ecclesiastical Court, is thought to be so Objection against the receiving or passing the Duke of Norfolk's Bill, for these Reasons, viz.

I. The House proceeds, in this Case, in their legislative and in their judicial Capacity; and in their legislative, all things must proceed originally by Bill.

II. That a Sentence in the Ecclesiastical Court can give the Duke no Relief, so to what he seeks by his Bill, viz. To dissolve his Marriage, and enable him to marry again; but that Relief must spring originally from the Parliament, without Relation to the Ecclesiastical Court.

III. That in Case there was such a Sentence, yet it would afford no Assistance in this Case: For the Parliament, in Cases of this Nature do not rely upon any such Sentence for a satisfactory Proof of the Fact; but bear Witnesses *in voce*, and thereupon proceed.

IV. That there are Witnesses now living to prove the Fact, which may be examined *in voce*; whereas, if they die during the tedious Proceeding in any inferior Court, then there can be no other Proof but *Depositions* taken in Writing.

V. That Mrs. Norton's Case was received Originally in Parliament.

12 January, 1691.

The Duke of Norfolk's Bill aforesaid having been Yesterday received and read, the Dutcheſs of Norfolk presented the following Petition to their Lordships this Day:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The humble Petition of Mary Dutcheſs of Norfolk,

Sheweth,

THAT your Petitioner being married to the Duke of Norfolk fourteen Years and upwards, never had or received from her Husband any Intimation of a Misdemeanor, on her Part, against him, which, joined to her Innocency of the Crime mentioned in the Bill, makes this Proceeding before your Lordships very surprising to her: Her Person, Estate, and Honour, which is more dear to her than her Life, being now brought in Question:

Your Petitioner humbly prays she may have a Copy of the particular Charge against her, with the Names of the Witnesses, and reasonable Time allowed her to answer the same, before any further Proceedings upon the Bill.

Mary Norfolk.

Upon which Petition the following Order was made.

The Merits 13 January, 1691.

Upon reading the Petition of Mary Dutcheſs of Norfolk, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Sir Richard Rogers, Sir Charles Hele, and Dr. Osmund, do attend this House To-morrow at ten of the Clock in the Forenoon.

Munk, Jefeon, Cler. Parliamentar.

14 January, 1691. After having heard the Civil Lawyers, the following Order was made.

The Merits 14 January, 1691.

After hearing this Day the Civil Lawyers, pursuant to the Order Yesterday, upon reading the Dutcheſs of Norfolk's Petition, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That his Grace the Duke of Norfolk shall bring in the Charge against his Dutcheſs, and particularly to the Person, Time and Place, by Saturday next, at twelve of the Clock.

Munk, Jefeon, Cler. Parliamentar.

3

16 January,

26 *January*, 1691.

This Day the Duke of *Norfolk* brought in the following Charge against his Dutcheſs:

The Charge which Henry Duke of *Norfolk*, Earl Marshal of England, doth exhibit against his Wife, Mary Dutcheſs of *Norfolk*, before the Lords Spiritual and Temporal in Parliament aſſembled, pursuant to their Lordſhips Order of the 14th of January, 1691, is for the Crime of Adultery.

THE Person charged to commit the ſaid Crime with the ſaid Dutcheſs, is John Gwynn, of the Parſh of St. Margaret's, in the Liberty of *Wynſhanger*.

The Times when the ſaid Crime was committed, were between the Months of *June* and *December*, 1685, and ſeveral Times ſince.

The Places where the ſaid Crime was committed, are at *Witchhall*, *Wynſhanger*, and within the Parſh of St. Margaret's *Wynſhanger*, St. Martin's in the Fields, St. James's, St. Anne's within the Liberty of *Wynſhanger*: And in the Parſh of *Lambeth*, in the County of *Surrey*.

Norfolk, and Marſhall.

Upon which the following Order was made.

Die Sabbati, 16 *January*, 1691.

Upon reading, this Day, the Charge, which Henry Duke of *Norfolk*, Earl Marshal of England, hath exhibited against his Wife, Mary Dutcheſs of *Norfolk*, for the Crime of Adultery: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That her Grace the Dutcheſs of *Norfolk* do amend the Houſe on *Monday* next, or ſome Perſon on her Behalf, then to receive a Copy of the Charge against her.

Math. Jolyne, Cl^r Parliament^r.

29 *January*, 1691.

The Answer of Mary Dutcheſs of *Norfolk*, to the Charge exhibited against her by the Duke of *Norfolk*, before the Lords Spiritual and Temporal in Parliament aſſembled.

THIS Respondent in Honour, that the Charge exhibited by the Duke of *Norfolk* into this Honourable Houſe against her, as to Time and Place, is too general, and is not pursuant to the ſaid Order the End of your Lordſhips Order of the 14th Inſtant, made upon the humble Petition of this Respondent. Wherefore the doth humbly hope, and pray, your Lordſhips will not oblige her to make any further answer, 'till the Duke hath bring in a particular and certain Charge, as to Time and Place, against her.

And this Respondent doth the rather humbly ſubſt, That your Lordſhips would pleaſe to require the Duke to be particular, and certain in ſuch material Circumſtances of his Charge against her; for that it appears, by his own ſetting therein, that the ſuppoſed Crimes objected to her, and alledged to be committed, were ſome ſix Years before the Bill was offered to this Honourable Houſe: During moſt of which Time, as the Advice, and by the Approbation of the Duke, was, and continued beyond the ocean, to ſeek him in his Charge and Part; he frequently declaring, that when he ſhould be more eaſy in his Fortune, they ſhould live together.

M. Norfolk.

Upon which Answer the following Order was made. And the Duke's Second Charge delivered in the ſame Day.

Die Meriti, 20 *January*, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That her Grace the Dutcheſs of *Norfolk* ſhall have a Copy of the Duke's Charge delivered this Day against her; and that ſhe, or Sir Thomas *Proffitt*, do attend this Houſe, on *Morrow* at 11 of the Clock in the Forenoon, to answer the ſaid Charge.

Mathew Jolyne, Cl^r Parliament^r.

Which Copy is as followeth:

The Charge which Henry Duke of *Norfolk*, Earl Marshal of England, doth exhibit against his Wife, Mary Dutcheſs of *Norfolk*, before the Lords Spiritual and Temporal in Parliament aſſembled, pursuant to their Lordſhips Order of the 14th of January, 1691, is for the Crime of Adultery.

THE Person charged to commit the ſaid Crime with the ſaid Dutcheſs, is John Gwynn, of the Parſh of St. Margaret's *Wynſhanger*.

The Times and Places when the ſaid Crime was committed, were at *Witchhall*, in the Months of *June*, *July*, *Auguſt*, *ſepte*, or one of them, in the Year 1685. At *Wynſhanger*, in the Months of *July*, *Auguſt*, or *ſepte*, ſome, or one of them, in the ſaid Year 1685. In the Parſh of St. Margaret's *Wynſhanger*, *March*, *April*, *May*, *June*, *ſepte*, or one of them, in the Year of our Lord, 1690. And in the ſaid Parſh of St. Margaret's *Wynſhanger*, in the Months of *July* or *Auguſt*, 1690. In the Parſh of *Lambeth*, in the County of *Surrey*, in the Months of *May*, *June*, *July*, *Auguſt*, *ſepte*, or one of them, in the Year 1691.

Norfolk, and Marſhall.

Served by Thomas Bowen, 29 Jan. before Sir of the Clock.

Upon which, the next Day, viz. the 30th of January, 1691, the Dutcheſs of *Norfolk* preſented the following Petition:

To the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled,

The humble Petition of Mary Dutcheſs of *Norfolk*,

THAT your Petitioner was ſerved with an Order of this Honourable Houſe, late laſt Night, to attend your Lordſhip this Day, by Eleven of the Clock, either in Perſon, or by Sir Thomas *Proffitt*, to answer to a new Charge brought in against her, by her Husband the Duke of *Norfolk*.

Your Petitioner is adviſed, That, for her juſt Defence, it is neceſſary to alledge in her Answer ſeveral ſpecial Matters relating both to the Duke and herſelf.

That in this ſhort Time appointed by your Lordſhips, your Petitioner

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finds it impoſſible to inſtand Council, to prepare ſuch an Answer as ſhe is adviſed it neceſſary to put in.

Wherefore your Petitioner humbly prays your Lordſhips, ſhe may have convenient Time to put in her Answer to the ſaid Charge.

And your Petitioner will ever pray, &c.

M. Norfolk.

Upon which the following Order was made.

Die Meriti, 30 *January*, 1691.

Upon reading the Petition of Mary Dutcheſs of *Norfolk*, praying that ſhe may have convenient Time for answering to the Charge put in against her, by his Grace the Duke of *Norfolk*, Yesterday: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That her Grace the Dutcheſs of *Norfolk* ſhall peremptorily answer, by herſelf, or Proctor, to the ſaid Charge, at Eleven of the Clock in the Forenoon.

Math. Jolyne, Cl^r Parliament^r.

Accordingly, *January* the 31th, the Dutcheſs of *Norfolk* delivered in the following Answer:

I Mary Dutcheſs of *Norfolk*, under Proſtitution, That the pretended Charge of Adultery given against me, in the Honourable Houſe of Peers, was, and is general, inſufficient, and ſuch as, I humbly conceive, I am not bound by Law to give Answer unto. Yet knowing my own Innocency, and that I am not guilty of the pretended Crime, ſuch Proſtitution being ſet to me, I ſhall, and do, under the Matters and Qualifications hereafter mentioned, answer, and ſay, truly affirming, That having been married to his Grace the Duke of *Norfolk* for near 15 Years, he never did (ſill) this pretended Charge given against me, in the laſt preſented, or intimate unto me, that I had ever ſinned his Bed; but did always treat me with great Kindneſs and Reſpect. And about the Year 1685, at his Requeſt and Deſire, I did go with him from *London* to *France*, and there continued with him for ſome Time; where his Grace, being under an Indispoſition, and continuing ſo for ſome Time, he ſhewed ſuch Affection to me, and put to great Truſt and Confidence in me, that all ſuch Things that were adminiſtred to him, in order to his Recovery, he did not, nor would receive any of them but what came from my Hands, and I did with great Care attend him: And being recovered, he told me his Occaſion required him to go for *England*, but he would return to me in *France* within ſome ſhort Time, and being he came to *England*, and at his parting with me, he ſhewed great Affection to me, and an great Deſire of Love, with Tears in his Eyes, ſaid, He had The ſaid Duke's Pardons to ſit me, deſiring my Patience, and that I ſhould return into *England* to him in ſome ſhort Time. And after his Grace's Return into *England*, he having Notice from me that my Lodgings was inconvenient, and deſiring his Leave to change the ſame, he wrote me Word very affectionately, that God forbid he ſhould continue me to any Inconvenience, and left me to my Liberty therein. And before his parting with me, in *France*, as a Teſtimony of his Love and affection to me, he ordered ſome yearly to be paid unto me out of his own pocket, by Quarterly Payments, one and above the ſaid Maintenance ſaid upon me by my Father, upon my Marriage with him. And that after his Arrival in *England*, he made ſeveral Viſits to my Mother, the Counteſs of *Peſborough*, and with great Obedience and Reſpect, ſaid to her Biſhopage, and told her, he had left me well and ſafe in *France*; and ſaid, that his own Deſires were preſſing upon him; but if her Daughter (meaning myſelf) would conſent that the Maſter of *Droghda*, and other Places, ſhould be ſent upon him and his Heirs, he ſhould thereby be made a happy Man. And I coming into *England*, his Grace having put off Houſe keeping, and dwelling in the Counteſs of *Peſborough's* Lodgings at St. James's for about 15 Years, and I having him for Alimony (the ſaid Counteſs a Year not being paid unto me), he did not, during that time, ſaid any Crime against me, which had been proper for him to have done, to avoid Alimony, if I had been guilty. And I, the ſaid Mary Dutcheſs of *Norfolk*, being at *Droghda* as *Peſborough* ſaid, his Grace did write very affectionately to me. And that Diſturbances happening in thoſe Parts, in November, 1688, I left *Droghda*; and, with the Conſent of the Duke, went beyond Seas, and there continued 'till ſent for by my Father and Mother, and then returned, which was in or about October, 1691, with the Duke's Conſent. And then Applications being made to me by the Duke my Husband, to join with him in the ſale of *Cyſle-Ryng*, and other Estates: But I being adviſed, that this muſt be injurious to me, could not join therein which I humbly apprehend to be the true Cause and Occaſion of this Proceeding against my Honour, on the Duke my Husband's Part.

And I the ſaid Mary Dutcheſs of *Norfolk*, alſo affirming to my Proſtitution of my Innocency, and praying that I am guilty of the pretended Crime charged against me, and being unwilling to impeach my Husband of any Crime whatſoever, yet being adviſed, That, by the Laws of the Land, a Husband ſuing a Divorce for the Adultery of his Wife, he ought not to obtain any Sentence of Divorce, if he be proved guilty of the ſame.

Wherefore this Respondent doth aver, and is ready to prove, that the Duke her Husband was, and is guilty of Adultery, and hath continued in the Crime of Adultery for the ten Years laſt paſt, and does ſo continue.

My Lords.

It is my Miſtake to be thus accuſed. I had rather ſtand charged for High-Treſon before your Lordſhips, than with this unqueneſs Crime. In the Charge for High-Treſon, the Manner of Trials, and the Ways of Proceedings are known: Is the Punishment in this Caſe against me.

Your Lordſhips are now creating new Ways of Proceeding against me, and a new Law to puniſh me; and this for a Crime ſuppoſed, and alledged to be committed ſix Years paſt, in another Reign, after publick Indemnities in the ſessions of Parliaments, many Sessions of Parliaments, and Excommunications of others, without mentioning this Crime against me. My Council are to ſeek how to adviſe my Defence in the Proceeding, being altogether ſtrange, and without Precedent, or Example.

I had my Proſtitution now to be very violent, and my Proceeding to be very ſwift upon me, having had but one Night to prepare my Answer to this General Charge. I do in this Place publicly ſwear, I am innocent of what is objected to me, and am not guilty of doing any

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husband's Bed: I am not guilty of the Crime charg'd against me. I hope (being thus accus'd) I may, without Vanity and Van-Glory, for what is well known, that I am not only the Duke of Norfolk's Wife, but also born and defunct from Parents and Ancestors of the ancient Nobility: I beg your Lordships Assistance, and my Ancestors, who live in this House, know no such Proceeding: It is with Regret that I bring this Answer to my self, and against my Husband, but it being my Defence, I hope you will excuse me.

And it your Lordships shall, as your great Wisdom, proceed farther in this Matter, I hope, and do most heartily pray, that I may hereafter have convenient Time to make my Proofs, and full Defence; and then I doubt not of your Lordships Justice to me, as well as for my Husband, who sits and Votes with your Lordships.

M. Norfolk.

Upon the delivering the said Answer, the next Day the following Order was made.

Die Febris, 23 Januarii, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That his Grace the Duke of Norfolk shall produce his Witnesses, or Meritor at Ten of the Clock in the Forenoon, to be sworn. And that the Duke of Norfolk do stand this House, by himself, or Proxy, at the same Time, and may have Orders for Witnesses of the Bench.

Math. Jolyon, Cler' Parliamentar'.

Accordingly, January 23, 1691, the Duke's Witnesses were produced, and whose Names are as followeth,

Margaret Edmund	John Holt	Mary Boyl
Ann Barton	My Lord	Roe Jones
Richard Owen	My Lord	Ann Jones
Thomas Haden	Thomas Alder	John Hylton
Thomas Parry	Thomas Alder	William Boyl
John Forster	Thomas Alder	John Wood
John Reynolds	Margaret Fyler	Henry Dapin
Thomas Lloyd	John Walsworth	John Dapin

After these several Witnesses were produced, on Behalf of the Duke of Norfolk, and had given in their several Places of Abode, &c. the following Oath was administered to them:

O U shall now Answer me in all such Testimony as shall be desired you by the Honourable House, in relation to the Charge of Adultery, which is in the Title of Norfolk, against the Duchess of Norfolk, with John Gorman; as also that your whole Knowledge of this Matter, and shall speak the Truth, the whole Truth, and nothing but the Truth, as well upon the Matter as shall be demanded on Behalf of his Grace the Duke of Norfolk, as upon such Interrogatories as shall be asked on Behalf of the Duchess of Norfolk, without Fear or Affection in either Party.

So help you God, and by the Contents of this Book.

After the Oath administered, as aforesaid, the following Order was made.

Die Sabbati, 23 Januarii, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Duchess of Norfolk's Proofs shall have a Copy of what was taken upon swearing the Duke of Norfolk's Witnesses at the Bar, on Tuesday next at Ten of the Clock in the Forenoon; and that the Duchess of Norfolk, by herself, Proctor and Counsel, shall attend, together with the Duke's Proctor and Counsel, at the same Time.

Math. Jolyon, Cler' Parliamentar'.

After Examination of Witnesses, on Behalf of the Duke, the following Order was made.

Die Martis, 26 Januarii, 1691.

After hearing this Day, the Witnesses on the Behalf of his Grace the Duke of Norfolk. It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Friday next, at Ten of the Clock in the Forenoon, shall be, and is hereby appointed, for her Grace the Duchess of Norfolk to make her Defence by her Proctor or Counsel; and that his Grace the Duke of Norfolk's Counsel and Proctor be then present, and the Witnesses who this Day delivered their Evidence, or Oaths, on his Grace's Behalf: And that the Duchess may have an Order for such Witnesses, as she shall think fit to make use of, on her Grace's Behalf.

Math. Jolyon, Cler' Parliamentar'.

Upon which Order, the Duchess was advised to peruse the following Petition:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The humble Petition of Mary Duchess of Norfolk,

Sheweth,

THAT since the Examination of Witnesses before your Lordships against your Petitioner, upon Tuesday last, the utmost Endeavour and Diligence hath been used, to prepare for her Defence against the Time appointed by your Lordships.

That your Petitioner is very much concerned, that, for the necessary Defence of herself, the Bench be tried to be under the Charge sworn against her, one Moment beyond the Time given her by your Lordships.

But, upon a Consultation with her Counsel and Solicitor last Night, she is advised, that it is absolutely necessary for her to address to your Lordships for Time, 'till Monday next, to bring in her Defence, (since her most material Witnesses being remote from London, and though she has sent for them, and used all Means possible to get them ready by the Time appointed, she cannot be able to have them here before Monday next. Wherefore your Petitioner humbly prays your Lordships, (it being a Case of the highest Conscience and utmost Importance to your Petitioner, to give her Time, 'till Monday next, to bring in her Defence.

And your Petitioner shall ever pray, &c.

M. Norfolk.

Upon which Petition the following Order was made.

Die Febris, 29 Januarii, 1691.

Whereas this Day was appointed for her Grace the Duchess of Norfolk to make her Defence; upon reading the Petition of her Grace the Duchess of Norfolk, praying, (it being a Case of the highest Conscience, and utmost Importance to her) to give her Time, 'till Monday next, to bring in her Defence; after hearing her Counsel at the Bar, and upon Oath made that some of the Duchess's material Witnesses are out of Town, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Duchess of Norfolk hath twenty Time given her for making her Defence, 'till Monday the Fifth Day of February next, at Eleven of the Clock in the Forenoon.

Math. Jolyon, Cler' Parliamentar'.

Accordingly the Duchess of Norfolk began her Defence; and the following Order was made.

Die Lunae, 1 Februarii, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That on Wednesday next, at Eleven of the Clock in the Forenoon, the House shall proceed in hearing the Duchess of Norfolk's Evidence; and that all the Witnesses that have been sworn on either Side, do then attend the House.

Math. Jolyon, Cler' Parliamentar'.

Which they did, and the following Order was made.

Die Martis, 3 Februarii, 1691.

After having this Day heard several Witnesses on Behalf of her Grace the Duchess of Norfolk, as also for her Grace the Duke of Norfolk, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Duchess of Norfolk's Counsel shall proceed in her Grace's Defence on Thursday next at Twelve of the Clock.

Math. Jolyon, Cler' Parliamentar'.

They proceeded accordingly, and the following Order was made.

Die Sabbati, 6 Februarii, 1691.

After having this Day heard several Witnesses on the Behalf of the Duchess of Norfolk. It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Council for her Grace the Duke of Norfolk shall proceed to examine Witnesses, on Tuesday next at Twelve of the Clock.

Math. Jolyon, Cler' Parliamentar'.

Which accordingly they did, and the following Order was made.

Die Martis, 9 Februarii, 1691.

After hearing some Witnesses this Day, on the Behalf of his Grace the Duke of Norfolk. It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Council for her Grace the Duke of Norfolk, as also the Council for her Grace the Duchess of Norfolk, shall be heard on either Side; at Twelve of the Clock, so soon as the Evidence on either Side; and that Mrs. Sandridge, and Mrs. Sturges, do then attend to be heard.

Math. Jolyon, Cler' Parliamentar'.

The Council attended accordingly, but not heard; and their Lordships were pleased to make the following Order.

Die Febris, 11 Februarii, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Council for her Grace the Duke of Norfolk, as also the Council for her Grace the Duchess of Norfolk, shall be heard on either Side; at One of the Clock in the Afternoon, to hear the Evidence on either Side; and that Mrs. Sandridge, and Mrs. Sturges, do then attend to be heard.

Math. Jolyon, Cler' Parliamentar'.

After Evidence summed up, this following Order was made.

Die Febris, 12 Februarii, 1691.

After hearing this Day the Counsel, and a Civilian, for his Grace the Duke of Norfolk; and also Counsel, and a Civilian, for her Grace the Duchess of Norfolk, who summed up the Evidence for their Grace's favourably, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That on Tuesday next, at Twelve of the Clock, this House shall proceed in the Debate of this Business; and that no other Business whatsoever shall intervene: And that all the Lords in and about the Town shall be summoned then to attend; and that the Officers that summon them, give the House an Account of what Lords they summon.

Math. Jolyon, Cler' Parliamentar'.

The Matter was accordingly entered upon; and, after some previous Debates by their Lordships, they were pleased to adjourn 'till the next Day, when they proceeded, viz.

Die Martis, 17 Februarii, 1691.

The Depositions taken at several Times before, on the Behalf of his Grace the Duke of Norfolk, as also those taken on the Behalf of her Grace the Duchess of Norfolk, were read at the Table, by the Clerk; and are as followeth, viz.

The PROCEEDINGS of the LORDS upon the Evidence.

Rowland Owen examined on the Behalf of the Duke of Norfolk, against the Duchess of Norfolk.

ROCHESTER Oath faith, That Mr. Rogers, about Six Years since, being the Duke of Norfolk's Butler, ordered him to carry the T-bag out, the Lodgings being open, he saw Mr. Gorman in Bed with the Duchess of Norfolk, the Duchess kept out of the Bed, and put on a Morning Gown, and Gorman hid himself in Bed; this was between Five and Six o'Clock in the Evening, about a Footing before Bartholomew Day; he did not tell the Duke: He is sure it was Gorman; he saw him often, twice or thrice a Day; the outward Door of the Lodgings was shut, but he opened it with a Key he had.

Rowland Owen gave a second Time, faith, he never had the Key of the Lodgings but once, that Mr. Rogers gave him the Key, when he went (as he told him) to the Blue Pots in the Hay-Market, to help the Duchess's Supper; he had been a few not from Knight then in the Lodgings, nor any other Woman but the Duchess of Norfolk; he faith, he

Margaret E. Howard examined on the Behalf of the Duke of Norfolk, against the Dutchess.

Margaret Ellwood faith, She came a Company to see the Lodgings at *Windsor*, in the first Year of King James's Reign, about three or four of the Clock in the Afternoon; a Woman told her that her Lady was not there, but the opening the Door, saw my Lady upon the Stairs in an old Petticoat, Mr. Gorman's Breeches were down; he pulled them up, and laid her Hand on his Sword, saying, *God damn you for a Whore, How have you the Impudence to come here?* My Lady bid him kick her down; he scattered some Coyners, that is, Men's Natives, on the Boards; the two on Nicholas, but her Kase, or a little above. Another Time after, the third Gorman's Handkerchief and Ruffian in my Lady's Bed; my Lady's Woman told there was Gorman's Name upon them. Another Time, the first Mr. General told Mr. Gorman out of my Lady's Closet. She saw Gorman's Legs within her's when she came the first Time into the House, and his Breeches went about his Heels. The first Time was in the Kitchen and at Time, Mrs. Kynfane told her it was Gorman's Linnen.

Witness produced in the Credit of Margaret Ellwood.

Captain Charles Potts faith, He both known Margaret Ellwood six or seven Years, and that he was Servant to the Duke of Norfolk, and that she behaved herself well and prudently there; her Husband was a Soldier in his Company, and was, as he hath heard, a Shoemaker.

John Fenot faith, he knew Margaret Ellwood, who was the Duke of Norfolk's Servant, about two or three Years, he never heard any Scandal, or Disgrace of the Woman, but that she carried herself civilly; he knows not whether she kept an Alehouse in *Windsor*.

Lazarus Perrell faith, He knows Margaret Ellwood, she lived in his House in *Brass-Martin*, next *Eggle* will be two Years. He knows nothing amiss of her; he took Care for her Lying; he never knew her keep ill House; he took a Room in his House, some of the Rent is behind, he thinks thirty-two Shillings, her Husband and the Woman gave him a Bond for it.

Witness given on the Behalf of the Dutchess, for impeaching the Testimony of Margaret Ellwood.

Michael Hadson faith, He hath been acquainted with Margaret Ellwood, *about three, four, or five Years*; When he first knew her, her Husband was a Soldier in the Duke's Company, and he was, as he hath heard, an under Housekeeper; he believes she was turned out of the Duke's Service, afterwards he sold Drink in a House of his at *Windsor*, and went away in his Debt by Night, without paying him; the took her Goods with her, this was in 1689.

John Hoad faith, She knows Margaret Ellwood; she lived in a Cellar of her's, and in a Back-House of her's, but not at the same Time, three Quarters of a Year, in *Brass-Martin*, about *Michelland* faith; she paid the Landlady but eleven Shillings and Six-pence; Her Course of Life was not good; she was in an inferior Condition, her Husband was a Cobbler in a Stall, and she had five Children.

* Observations upon the foregoing Evidence.

Here is a foul and a suspicious Story in this Deposition of Margaret Ellwood, wherein the Duke largely upon the Credit of her own Testimony, without any Colour or corroborating Evidence to support it: Only Capt. Charles Potts, John Fenot, and Lazarus Perrell, are produced to speak in his Partial Reputation. The first faith, he behaved himself well and prudently in the Duke's House; the second and third, that they know no ill by her.

There were produced on the Behalf of the Dutchess, and to invalidate the Testimony of Margaret Ellwood, three six Witnesses, Michael Hadson, John Hoad, Mary Trevis, Mary Javis, Anne Roff, and Mary Roff. Mary Trevis, Mary Javis, and Anne Roff, do all depose, that about Christmas last, speaking of the Dutchess, and Mr. Gorman, Margaret Ellwood told each of their Witnesses respectively, that she never saw or knew any Thing of ill by the said Dutchess; and yet Ellwood's Accusation bears Date in the first Year of King James. Mary Trevis further saith, that upon the next Sunday after Christmas last, Ellwood told her, upon borrowing a Scarf of her, that it might be five Pounds in her way, for the Duke was to be divorced from the Dutchess, and he had sent his Charge for her, and she was to be a Witness. Anne Roff speaks also to the same Effect, how Ellwood told her there would be a Divorce, and the Duke had sent for her to be a Witness; and likewise faith, That Ellwood's Husband told her, that his Wife was to have thirty Pounds per Annum settled upon her, and five at *Windsor*, and have the Shewing of the Cassin.

Mary Roff speaks to the same Purpose also, with the Witnesses above, as to what Ellwood's Husband said of *Windsor*, the Sentence, and the Divorce, adding also, that the Duke was to have a great Fortune (according to the common Rumour then about the Town); Mary Roff's Father was by, and heard all this: It was about a Week before the Duke of the Information that Discourse had passed.

Nay, the Dutchess was so close in the Matter, that she sent for Ellwood a little before Christmas last, and had her speak the Truth; as Ellwood herself owned to Mary Javis and Anne Roff.

To come now to the Quality and Credit of Margaret Ellwood. Hadson faith, she was his Tenant at an Alehouse in *Windsor*, in 1689, carried off her Goods by Night, and went away in his Debt.

He, likewise, she lived in a Cellar, led an ill Course of Life; her Husband was a Cobbler in a Stall.

Anne Roff says, That she had five Children, and that she had but Six-pence for Maintenance for herself and seven.

Mary Trevis faith, She hath but a slender Acquaintance with Margaret Ellwood; but the said Ellwood sent to borrow a Scarf of her the Sunday after Christmas last; and faith, That passing the next Day by her Scarf, she, the said Ellwood, desired it for a longer Time, for it might be five Pounds in her way, for she was to be a Witness for the Duke of Norfolk, who was to be divorced from his Dutchess, and that the Duke sent his Charge for her. I told her there could be no Separation as *Marriage*, except Adultery could be proved; and that I could not think it reasonable to believe, that so mean a Servant as this could be a Spectator to so great an Action as that was. She said, she thought she could do the Duke no Kindness in going, for she never saw any other Harm by the Dutchess, than that she Gentlemen come to and fro to the House; but the Duke had sent for her, and she must go.

Mary Trevis faith, She knows Margaret Ellwood, who she heard of, the Lady Dutchess sent for her a little before Christmas last, and said, Margaret, I desire you to speak the Truth, I would not have you divulge my Lord in the least. Margaret Ellwood said, She never knew no Harm by her Grace. The Dutchess demanded the Keys of her, and she gave them her; and the Dutchess gave them to her, the said Ellwood, again the next Morning: The Discourse was a few days before Christmas last.

Anne Roff faith, She knows Margaret Ellwood, who came to her House, and told her, about two Months since, that the Duke of Norfolk sent her his Wife, for there would be a Divorce between the Duke and Dutchess; and asking her what she would say, she answered, she could say little, but that she knew no ill by the Dutchess, but that she was a good, generous spirited Lady, and she never knew any ill Action by her in her Life. I bid her have a Care what she went about, for that would do the Duke but little Kindness. The Dutchess, the said, called for the Keys of her Lodgings, but gave her them back the next Morning. She faith, That last Week she went to her to demand a Debt, and she promised to come and pay it her. She faith, she went to the Porter at the Duke's to ask for her; but the Porter said she was not within, but meeting with her Child there, she said she was within, and brought her, the Wife, to her in the Duke's House, and she made her very well come, and sent her Husband with her, the Wife, to see her Children's Lodging at the Green Man, near the Duke's House: She faith, Ellwood's Husband told her, upon asking how the Cause went, that his Wife was to have 30*l.* per Annum settled on her, and to go to *Windsor* to live, and to have the Shewing the Cassin: She faith, That upon her going to see the Children, and commending their Lodgings, that Ellwood's Maid, or Woman, told her they paid four Shillings a Week for the Lodgings; she faith, the Children were well clothed, with good Frocks and Top-knots, and they used to be ragged, and that her Husband used to allow her but Six-pence a Day for her and her Children: She faith, That upon the next Sunday told her she had been with the Dutchess; and that her Grace bid her do nothing to divulge her Lord, but speak the Truth.

Mary Roff faith, She knows Margaret Ellwood, She faith, she heard Ellwood's Husband say, that the Duke of Norfolk had taken Care of his Wife and Children, and settled thirty Pounds per Annum on them, and her Habitations was to be at *Windsor Castle*; and said, that my Lord Duke would be divorced, for he was to have a great Fortune of Twenty Thousand Pounds a Year: This Discourse was the last Week, and her Father was present, and her Mother was just gone out.

Thomas

This was her Condition till near Christmas last, when all on a sudden, as Anne Roff deposes, she was taken into the Duke's House, the Children were shut out, and took'd up with good Frocks and Top-knots, (which were till then all in Rags,) Lodgings provided for them at four Shillings a Week, and she was to look to them, and use all possible Means of doing all this. But, in fact, the Change was not wrought by Miracle, and leans much toward the Discourse before-mentioned, that Anne and Mary Roff had with Ellwood's Husband.

The Question, at last, is briefly this: Whether is to be believed a Woman under so many scandalous Circumstances, and one that swears for herself too, or six Witnesses against her of so unquestionable Probity, that not so much as one of them could be impeached by the other Party?

To pass now to the palpable unlikeliness of the Story barely in itself, Ellwood was carrying Company, the says, to see the Lodgings at *Windsor*, and opening the Door, the saw and heard, as in her Deposition. How could she, that none of this Company could be proved, or so much as named to second Ellwood? For 'tis to be presumed, they must needs hear and see what passed upon this Adventure, as much as herself did; or if she had but named the Woman, who, she says, told her my Lady was not there, it might have served as a collateral Inducement, for the giving of some Sort of Credit to it. But in a Matter of this Importance, to have so many Witnesses within Reach of being found out, and none to appear, looks very ill on their Part, that were so much concerned to produce them: And if for Gorman's threatening her, and the Dutchess's bidding him kick her down, no People in their right Wits but would have try'd to stop her Mouth with fat Words and a good Birse in such a Case as this, rather than provoke her by Menaces and ill Language, to run open Mouth to the Duke with the Story, in Revenge, when this had the Dutchess's Honour and Estate so absolutely at her Mercy.

As to the Business of Mr. Gorman's Handkerchief and Ruffian, and his being let out of the Closet, the Countenance is all of the same Piece with the rest; for why were not the Persons named as the Discourse proceeded to prove the Particulars therein mentioned, as well as Ellwood? It is most certain, that the Prosecutors could easily have done it, and that it was properly their Business and Interest so to do; for what signifies Ellwood's little Testimony, under her Circumstances, without corroborating Proofs? She will say, that she is Company to see the Lodgings; a Woman that told her so and so, and another Woman and a Gentleman that said, and did this and that, and yet not one Creature at last to second her Deposition, nor any Pretence of an Exception to the Evidence on the other Side.

Simon Vassell examined as the Belliff of the Duke of Norfolk, against the Duchess.

John Farrel saith, That he was at *Windsor* to draw the Dutchess of Norfolk's Picture about fix Years since, and had the Duke's Closet to put the Pictures in. When he had done, and had been at Home two or three Days, *Germans* came to him much concern'd, and said, You can do the Dutchess an extraordinary Kindness, and will oblige the Lord and Lady *Peterborough* in the highest degree; then he showed me a Letter of the Dutchess to me, and read it to me: before that he told me there was a Sheet and Waistcoat, and they are known to be his: He said, I desire you to save the Dutchess's Honour, I desire you will be so much a Gentleman as to own them to be yours, and that you left them there: I desired to be excus'd, I could not do that without Prejudice. He told me the Lord and Lady *Peterborough* had discounten'd the Duke of Norfolk upon it, and if it were own'd not to be my Linnen, their Discountenance would hurt much upon him, that if there came any Evidence to affirm them, he would leave off the Picture. I refused him; he offered me a Piece of Gold, and told me I should make my Fortune by it; but I still refusing, Mr. *Germans* went away very much discontented: Mr. *W* being in the next Room, over-heard the Discourse between *Germans* and me, and told it, and spoke of it, or else I had not been here now.

John Rathenell sworn a Witness as the Belliff of the Dutchess of Norfolk, for investigating the Tiffenry of Simon Vassell.

John Rathenell saith, That he lives in *Crown-Court* in *Crown-Garden*, and is a Taylor: He saith, he knows *Simon Farrel*, and that he, the Witness, married his Half-Sister: He saith, that about a Quarter of a Year after the Belliffness of the Dutchess happened at *Windsor*, he was at *Farrel's* House about Eleven of the Clock in the Night, and *Farrel* lock'd the Door, and told him, he had deserv'd him by marrying his Sister, and said, he would be his Death, and drew his Sword, and commanded him to step, that he might slay him at his Pleasure; and the said *Witness* shuddring for fear of his Life, knowing his *Farrel*, and he drew the *Witness* about a dozen times with his Sword, and threatened him to take his Life, if he, the *Witness*, did not fetch his Wife down that Night, who was about twelve o'Clock, and which was about six Weeks after the day in; and he was to bring her to be whipt, and to bring six Rods with him: Upon this, the *Witness's* Promise to do this, he let him go, and he hath not seen him since, but in the Street. He had Half a Year before that been distracted for six Weeks, and he, the *Witness*, fetch'd *Dr. Fagles* to him once, and the Doctor came several times afterwards to him. One Night in that Distraction, he got from the Women that watch'd him, and ran about two Hours in his Shirt and Waistcoat, in a frothy Night, and cut his Feet, and was brought Home by the Watch. He said, his, the *Witness's* Wife, was to have been here this Day as a *Witness*, and was here, but not having an Hour to reckon, and being ill, is gone Home with her Midwife: He saith, he never durst go near *Farrel* since he should him: He saith, that Mrs. *Farrel*, after she came from *Windsor*, said, That the Dutchess had all People about her, and that she believ'd her to be much wrong'd, and said, she could clear her about the Scandal of the Linnen that was found, for whether it was, or was not Mr. *Farrel's* Linnen, he could do it, and said, supposing I had brought my Husband's Linnen down to be wash'd, and the Landlady fetching of it, she might take it up, and leave some of it behind.

Thomas Fyler examined as the Belliff of the Duke of Norfolk, against the Duchess.

Thomas Fyler saith, That he was Chamberlain to Mr. *Germans*, and carried the Dutchess of Norfolk often, about two Years since, in his Coach, and brought her Home, and the Footmen have had four Half-Crowns given them; and *Mary*, a Dutchess, his Helper, called it *High-Mary*: It was by Night, against a Light, that he saw her Face

in the Coach; it was about seven or eight of the Clock at Night, about this time a-Year; he had seen her Face once in the Day-time, for looking out of a Safe-Window, two Stories high, in Mr. *Germans's* House, in *Park-street*: he know'd her Face well enough; he hath seen her before, and since she was married.

Windsor sworn as Belliff of the Dutchess of Norfolk, for investigating the Tiffenry of Thomas Fyler.

John Hall saith, That he lives at the *Coffe* in *Tuttle-Street*, and is a Jewer: he saith, he hath known *Thomas Fyler* two Years, and that about three Weeks since, they being drinking together, and talking concerning the Duke and Dutchess of Norfolk, he said, Mr. *Germans* had done all Things by him, in turning him off in *Ireland*, and in turning him off here; and he was resolv'd to be reveng'd of him.

Helen Grinley saith, He lives with Mr. *Germans*, and that he hath known *Thomas Fyler* above a Year and three Months, in Mr. *Germans's* Service; he heard him say, in the last Week of *December* last, in Mr. *Gold's* House, about three Days before he was turn'd away, that he thought it no more due to murder his Master, than it was to kill a *Louse*: He saith, he hath lived with Mr. *Germans* about a Year and a Half, and that he never saw the Dutchess of Norfolk with him; and that he hath never seen her come to him, lived with him in the Place where he now lives: He saith, he never saw Mr. *Germans* with a Woman that was called the Lady *Beaumont*, nor known any such Name, or Person.

Thomas Lloyd examined as the Belliff of the Duke of Norfolk, against the Duchess.

Thomas Lloyd saith, He knows one that went by the Name of the Lady *Beaumont*, at her House at *Fear-Hall*; one *Germans*, a Wine Merchant, took the House; he came thither about *Midwinter*, 1689. She was off and on these 'till last *November*. He hath seen the Person that went by the name of the Lady *Beaumont*, and it is the Dutchess of Norfolk, *Gordon* was her chief Man, and his real Name is *Ryan*. Her Brother, was pretended, which he hath said was Mr. *Germans*, was the chief Man that came there; sometimes he came once or twice a Week, sometimes once; he's cousin, as the *Servants* said, it was Captain *Germans* that came there, every Body said it was he: He knows him not by his Name, but by *Head-say*; if he could see him now, he could tell whether it was he; he hath not seen him since the Lady went away; he believes *Germans* was there every Month in both the last Summers; he cannot say that *Gordon* was ever there when *Germans* was there; he saw him several Times there in *May*, *June*, *July*, and *August*, 1691. *Germans's* own House was then pretty long: He cannot positively swear he was Captain *Germans*; he supposes, if he saw him now, he could know him.

Windsor sworn as Belliff of the Dutchess of Norfolk, for investigating the Tiffenry of Thomas Lloyd.

Alexander Herman saith, That he served Mr. *Germans*; he hath left his Service a Year and a Half, about eight Weeks after he came from *Ireland* with the King; he served him a Year and a Half: Mr. *Germans* was in *Ireland* with the King, in the Summer, in the Year 1690. He went to *Ireland* two Days before the King that Summer; he continued there four Months: He believes he went the last of *May*, or the first of *June*; he came back with the King; He, the *Witness*, served him all that while, and saw him every House every Day, and never stir'd from him; he came from *Ireland* in the same Ship with the Lord *Peters*, the Earl of *Monmouth*, and Mr. *Felton*; and he went to *Ireland* in the *Minnow* Yacht, with the *Envoy* of *Scotland* and *Brandenburg*, and the Marquis *Mimozin*. He saith, Mr. *Germans* was at *Brighthelm* in *May* last, he saw him there, and spoke with him there: He saw the Lord *Peters* and the Lord *Lovely* there with him; he lodged in the same Tavern there with him, for four Days, and saw him one after: He, the *Witness*, coming then for *England*, left him there. He never knew

* Observations upon the foregoing Evidence.

There needs no more to the overthrowing of *Farrel's* Evidence, whatsoever it is, than the Testimony of *John Rathenell*, to prove him *Nix Comper*; witness his Outrage upon *Rathenell*, the fantastical Freak of feeding at Midnight for fix Rods to whip his Sister-in-law; and another Fit, for a matter of six Weeks, when *Dr. Fagles* made him several visits to compose him, his Frenzy being so violent upon him, that he broke loose from his Keepers in a frothy Night, and cut down the Streets in his Shirt, till he was taken up by the Watch. This is the Sum of *Rathenell's* Testimony, and not one Word oppos'd either to the Credit of the *Witness*, or the Truth of the Depositions. But it may not be amiss, after all this, yet to speak a few Words to the Likelihood of what *Farrel* has here depos'd.

Mr. *Germans* came to see him, he says, with a Letter from the Dutchess, which he read to him, and in the Name of the Lord and Lady *Peterborough*, desir'd him to say, the Shirt and Waistcoat were his, but not one Word all this while of the Contents of the Dutchess's Letter. He says again, that the Shirt and Waistcoat were known to be his; now if they were known to be Mr. *Germans's*, what good could *Farrel* do by taking the Matter upon himself, when he saw four Weeks would do, there was a Piece of Gold offer'd him, and that would not work neither. The Dutchess and Mr. *Germans* were wonderfully pleas'd, sure, in this Case, from what they were in the Belliffness of *Osborne* and *Edmund*; there was no Purse of Gold, or Dutchess's Letter to tender the Matter, but, on the contrary, *Edmund* was threaten'd, posses'd, and desir'd, instead of calojnering him. And what was all this for at all, but only to remove a jealousy, and melt modesty, at the same time, to condemn themselves by a Confession out of their own Mouths, and improve the Sublimity into a Certainty. Can any Body imagine that they would not have done more to have suppress'd *Osborne* and *Edmund's* Evidence, than *John Rathenell's*, or

Simon Farrel's, who swears farther, that his Wife heard all this Discourse between *Germans* and himself in the next Room, and told it at? Why was the not produced there, or the Person to whom she told it? But *Roberts* swears, that Mrs. *Farrel* said, the Dutchess had all People about her, and was much wrong'd, and that she could clear her about the Scandal of the Linnen, so that in plain, Mrs. *Farrel* was not an Evidence for the present Turn.

There is not one Word in *Fyler's* Evidence, true or false, that's worth the hearing, only it is levelled, upon the main, at the Dutchess and Mr. *Germans*, and *John Hall* gives the Reason of it, for this *John Fyler*, he says, was Mr. *Germans's* Coachman, who, he said, would turn him off, and he would be reveng'd of him. *Helen Grinley* testifies also, that some three Days before *Fyler* was turn'd away, he said, he thought it no more due to kill his Master, than to kill a *Louse*. So that the Evidence he gives, was grounded on the Malice he bore his Master for turning him off.

Lloyd's Deposition is nothing at all to the Purpose; or if it were not so pertinent, the Fallacies in it are sufficient to spoil it. For, in Truth, his Evidence, as to Mr. *Germans's* being at *Fear-Hall*, is only grounded upon *Head-say* and Report, and yet he swears to swear him to be there every Month in both the last Summers; and particularly, that he was several Times there in *May*, *June*, *July*, and *August*, 1691. Whereas *Alexander Herman* swears, that Mr. *Germans* went to *Ireland* in the Summer 1690, on the last of *May*, or the first of *June*, where he stay'd about four Months, and that himself saw and served him there, and says farther, that he was at *Brighthelm* in *May* last. *Anthony Moore* says also, being Barber to Mr. *Germans*, that he went beyond Seas, and the Campaign was almost over when he first shav'd him, when he came back from *Scotland*, which is a flat Contradiction to *Lloyd's* Evidence.

in her Court, she knew not who left it; and said, she thought nothing to it. Mrs. Knapp, saying, You may say something to it, Mr. You had not had this Oath in her Mouth, then the said, she had, and was the Duke of Norfolk's, and had told the Duke, that she had consented to go into Mr. Germain's House as a Post Maid, and he consented to let the Duke of Norfolk, by a letter tell the Duke of Norfolk, to let her not come but to seven Years before, but she had been a day or two, since the coming out of France, and that was not of the Duke of Norfolk which she saw on Captain Germain's Side, whereas Mrs. Knapp, which says, if she were sure it was not this, she had, she was sure it was not, the witness, at the night hour, and went to go home to her Children, if she would leave it, but she could not, went to Mr. Germain's, and two other Women, were present in Great Earl's House when the Dispute happened, which was the night the Order came out, the 14th, he wrought in Mr. Germain's House, he was one of the Ladies that in May 31 one of the Ladies on the Night gave Order to take down a Picture, she was reported that Captain Germain's Sister.

Elizabeth Knapp said, she knew Mrs. Knapp, who came into Mrs. Germain's first time she was subpoenaed, and she told the Paper in her Hand for her said said, she went to Mr. Germain's for a Post, and she thought she saw the Duke of Norfolk there, but she saw her sister coming from France, and was sure it was not her, and wished she might never see her Children, and him, if ever she saw her there.

Alexander Horne said, That he knows John Wadsworth well, he never saw any Dispute with her concerning the Duke of Norfolk's being in Mr. Germain's House; he said, he had been often at Mr. Germain's House, but he never had any Dispute with her concerning the Duke of Norfolk, nor never saw this Woman in his Mother's House in all his Life. He wanted on my Mother at Table, and in the Chamber, all the Time of his being, with her was a Year and a Half; he never saw a Lady in a Mother in his Mother's House.

Mrs. Knapp said, That she knows John Wadsworth, she was her Servant, but not long, for she was not honest, she, the Witness, being gone out, at her Return, she met her going away with her the Witness's Linen, and her Habit, &c. handled up. This is about 11 Years since.

Francis Knapp said, That he knows not John Wadsworth, nor ever Disputed with her, nor never saw her at Mr. Germain's House, nor did the Witness ever carry any Letters thence.

Witness examined on the Behalf of the Duke of Norfolk, against the Credit of John Hall.

Henry Dingley, juror, said, That he knows John Hall; he was a Woman at Mr. Germain's, when he, the Witness, was there; and Mr. Hall often said to him, that he believed it was the Duke of Norfolk that was there in the Mask, and that gave him Discomfort in his Work there; this was at Mr. Germain's House in Park-Street: He could not affirm it to be true, because he was asked, but really believed it.

John Hyatt said, That John Hall was employed by Mr. Germain, and a Lady that was asked; the Lady was the first that ever showed him his Work what he was to do, and the first Work he did was to make down a Partition, we talking among ourselves, that it was the Duke of Norfolk. John Hall has said, that the Duke of Norfolk was the Duke of Norfolk, not that he could say so of his own Knowledge, but that he had been often told it was so. He said, that Mr. Hall said him, the Day he the said Hall was examined here, that he had been asked more, he could have said more.

Witness sworn on the Behalf of the Duke of Norfolk, attesting a finding Resolutions.

Mrs. Judith Sturton said, That she was Servant to the Duke of Norfolk, when the Report was of the Duke of Norfolk and Mr. Germain, which was about a Week before the Duke and Duchess went to France: She was asked by the Lord Perceval, in the Presence of the Duke of Norfolk, in the Duke's House in St. James's Square (where they then the Duke), as if he would answer it to the Face of Almighty God, if she did know whether his Daughter was an Adulteress: Her Answer was, That she hoped for God in Heaven, the Duchess was as virtuous as any Woman alive, for ought she knew. She said, that what she said is true, and if she should pretend to say more, she should wrong

her. She said, That no one was present, besides the Lord Perceval and the Duke, when they examined her; and that she saw no Lord Walsingham at that Time, and that she did not remember the said Mrs. Knapp being there concerning the Duke and Mr. Germain, and the never spoke with Mrs. Knapp, and she was not at Mr. Knapp's when the Duke was at Park-Street. She said, there was a Report, a Scandal, which she was sorry for.

Edith Sawbridge and Webb, produced on the Behalf of the Duke of Norfolk, to disprove the Testimony of Mrs. Sturton.

Edith Sawbridge said, That the Testimony following this unhappy Dispute concerning the Duke of Norfolk, Mrs. Sturton came into her Chamber, and she telling her what had happened at Mr. Knapp's, Mrs. Sturton replied, that it is nothing but what she expected before. The Witness replied, That if she, the Witness, had been as near the Duke of Norfolk as the said Mrs. Sturton, she would have prevented all this. To which Mrs. Sturton answered, Would you have had me when I was at Mr. Knapp's? The Dispute we had was, that Mr. Knapp told her, when I came from London on Friday Night, that the Duke of Norfolk was come, for the expected her Thence to be cut every Night before my Lord Duke went to Park-Street; I asked her the Reason of her Fear, she answered, Germain had laid with my Lady Duchess, and since my Lord Duke went to Park-Street, that when he came home he would hear of it, and he would kill her for a Slave, and if she should tell my Lord, Germain would cut her Throat. I bid her have a Care what she said, for she was dangerous Words: How can you prove this? She said, it was very true. The Witness asked her (Mrs. Knapp) how she knew that I was at Mr. Knapp's, instead of going home, went into the Closet. The Witness came, said, that she had all this to Mrs. Sturton, but she pressed Part of the day. Mrs. Sturton said, this was nothing but what she expected before. This was the Testimony when my Lord Duke came from Park-Street, this was about Bartholomew's Eve, in the first Year of King James's Reign.

Mrs. Sturton asked in, to confront this Edith Sawbridge, and examined.

Mrs. Judith Sturton further said, That she saw Mrs. Sawbridge once in the Duke's House in St. James's Square, and they talked of the Sister of Germain and the Duke of Norfolk: She said, she, the Witness, never heard Mrs. Sawbridge say, that Mrs. Knapp should say, that Germain had with the Duke every Night at Mr. Knapp's: She said, that she said to Mrs. Sturton, that she expected to hear that before now, the never said to Mrs. Sturton, Would you have had me when I was at Mr. Knapp's? She said, she remembered that Mrs. Sawbridge told her, that Mrs. Knapp said, that she was afraid that her Throat would have been cut when the Duke was at Park-Street. She remembers not that she asked Mrs. Sawbridge the Reason of Mrs. Knapp's Fear, or that she told her any thing of Mrs. Knapp's saying, that Mr. Germain had laid with my Lady every Night at Mr. Knapp's: She saw Mrs. Sawbridge, and disapproved with her; but she cannot say what Dispute she had with her.

Mrs. Elizabeth Cornish said, That she went with the Duke and Duchess of Norfolk into France, they went together very lovingly, and parted to: She thinks the Duke laid with her about a Fortnight; the Duke's Eye was ill, and my Lady was often to him; and when she did so, we retired: My Lady drew him by the eye, they sat and drank together every Day; they did not drink together that she knows: My Lord told her at Paris, at the Gate in the Monastery, that he would fetch her away suddenly; and they parted kindly. Mrs. Knapp was in the Monastery with the Duchess, and the Duchess continued there about fourteen Months, my Lord expected a great deal of Kindness to my Lady in going, and while he was there, there were Trains on both Sides at parting. When my Lord and Lady were together in the House called Le Hotel de Tournay, in Paris, we used to withdraw, not knowing what they had to say together.

Mr. Matthew Scott said, That he paid several Sums to the Duchess from the Duke: In May, 1688, he paid one Hundred and twenty-five Pounds for the Duchess to Mr. Grogg: He paid two or three hundred Pounds into France, when the Duke and Duchess were there: He cannot say, that he remitted any Money into France after the Duke came Home: He knows not that any Money was paid to Mrs. Mornay for my Lady by the Duke's Order.

Mr.

Mrs. Penelope Knapp, said, That John Wadsworth was her Servant a while, but was not honest, and that she had hidden some of her's and her Husband's Linen, and was going away with it.

Francis Knapp denies the Knowledge of Wadsworth, or any Dispute with her. She never saw her at Mr. Germain's, nor ever carried any Letters thence.

But here are two Witnesses brought in now to arraign the Credit of John Hall, which is as much as to say, that they had no Exception to any of the rest, or which is all one, to the Truth of the Matter; for John Hall's Evidence is by them confirmed over and over. And what is it that these two Witnesses have to say at last? Henry Dingley says, That he believed it was the Duke of Norfolk he saw in Mr. Germain's, but could not affirm it. And John Hyatt says, That they told it was the Duke of Norfolk, but he could not speak it of his own Knowledge; which amounts to no more than a bare He-say.

* Objections was also Dr. James of Mr. Judith Sturton, Edith Sawbridge, Elizabeth Cornish, Mr. Matthew Scott, and Mr. Robert Welborne.

THE Reader will find this Dispute about Mr. Germain and the Duchess, to be a Scandal of a Master of six Years standing, Had she, a well known, has been to the Short and Walford, and that he immediately told my Lord of it. Now Barstow swears likewise (with another full Oath between her Teeth), that this Short and Walford were sent by the Duke to the Lord Perceval. It follows now to be seen,

what Course has been taken from the first to the last, for a thorough discovering of the Truth of this Matter, and how it comes to pass, that the Thunderbolt should hang in the Air so many Years after the breaking of the Cloud.

Mrs. Sturton is here upon her double Oath, first under the Shrift of the Duke and my Lord Perceval, who took her presently, and assured her, as ever she hoped to see God in Heaven, to declare what she knew as to the Duchess being an Adulteress: she pressed herself upon her Oath of Salvation, that the Duchess was as virtuous as any Woman alive for ought she knew: she swore the same thing over again at the Bar of the House of Lords; and being interrogated about the Short and Walford before spoken of, she swore likewise, that she saw no Short or Walford at that Time.

Edith Sawbridge was now produced against the Credit of Mrs. Judith Sturton, and lays the Stress of her Evidence upon what Mrs. Knapp said, which has been the very Fifth of the Question throughout the whole Cause, and the Prosecution has till been at it as Fast: when it came to any material Point, that is to say, only the Hear-ings, Witnesses are produced, and those that can speak upon Knowledge, and piously to the Faith, are withdrawn, or concealed, contrary to the Practice and Reason of all judicial Proceedings.

Mrs. Sturton is called to again to confront Edith Sawbridge, and denies every Article in her Deposition, one by one, that is of any Moment; but at the same time there appears no Exception on the other Hand, to the Credit of Mrs. Sturton. Neither is it to be imagined, that any Woman

Mr. Robert Williams ſaid, That about the Middle of November laſt, the Duke of Norfolk ſent for him by Mr. Scott, to meet his Grace in his Room, by the Lords Houſe, which accordingly he did: His Grace told him, there had been ſome Meſſages and Propoſals by Sir Robert Clayton and Sir Robert Hedges, but he looked on them both as Men of great Buſineſs, and could not attend on ſuch Matters, and therefore he ſent for him, knowing how he was willing to do any Service between them. The firſt thing his Grace deſired, was to acquaint his Wife, and the Lady Peterborough, and he thinks he named the Lord Peterborough, that he expected to be informed from the Dutcheſſes Equage; for, ſays he, I hear ſhe is ſetting up for a great Equage, and I deſire to be free from being obliged to pay for any of that: He told his Grace, that he thought he was miſ-informed, for all the Equage he ſaw, was a Coach, Coachman, two Footmen, a Pair of Horſes, and two or three more Servants. But, ſays his Grace, I formerly paid Money for her to ſue *Abſolvit*, and ſhould be unwilling to do it again. I preſume, my Lord Duke, ſhe has by this a Debt contracted while ſhe was his Grace's and the Dutcheſſes lived together. But, ſays his Grace, pray do you acquaint them of it, for this is what I expect.

Next, ſays his Grace, my Wife has ſome Pretensions upon *Coffin-Rings*, which I could ſell without her Conſent, by loſing Two thouſand, or Two thouſand five hundred Pounds: And beſides, I find the hath ſince a Pretention upon *ſilvery*, which I never knew till very lately, when I was upon ſelling that Reversion; but I ſhould have been an ill Man to pretend to the ſaid, if I had known of any ſuch Inſtrument; therefore, I would have you tell my Wife, that if ſhe will conſent to the Sale of ſuch Eſtates, and make me only in that Particular, let her conſider wherein I may make her ſelf, and I ſhall do it. I know ſhe was a great Lover of *Diamonds*, and I ſuppoſe it to ſell; and ſhe did once offer me a conſiderable Sum of Money for my Life in it: Therefore let her conſider of this Matter, and if ſhe can propoſe any thing for her Sale and Quiet, on ſuch Terms, I ſhall comply with her.

I do not ſay it to threaten her: But I am told, that for the Reaſon of there being either One-and-twenty, or Two-and-twenty Catholic Heirs of my Family, before one *Proſtitution*, if I would—(*Here his Grace ſays*) ſays *His Grace*, You underſtand me: *Adieu* as *Adieu*, his Grace was played to *ſay again*, If I would bring in a Bill of Divorce, I ſhould obtain it on that Account. He told His Grace he would be ſorry to hear of any ſuch Thing, but in Obedience to his Grace's Commands, he ſhould acquaint the Dutcheſſes with it. Accordingly he did, the ſame Day, and Lady Peterborough both. Her Grace was very angry at the Meſſage, eſpecially at that Part that mentioned a Divorce, and he was ſent the next Morning to Mr. Scott, to deliver him to acquaint the Duke, that as he was my Lord Peterborough's Servant, it was not fit for him to receive nor bring ſuch Meſſages: But if his Grace had any thing to ſay, it was moſt proper by a Servant of his own, or to ſend for one of his's. I carried the Meſſage the next Morning to Mr. Scott, and at my Return Home, the Dutcheſſes ſhewed me a Letter the Duke had writ to the Duke to the ſame Purpoſe, and which was ſent to his Grace, but not by him: The Dutcheſſes did declare, when he propoſed the Sale of *Coffin-Rings* and *Bellay*, as this Duke had deſired, that he would never content to it. By any of this Diſcourſe it did not appear to him, that the Duke ſhewed any Inclinations to live with the Dutcheſſes, nor did he underſtand it fo.

The Evidence being ended,

After a long Debate thereon, the Queſtion was put:

Whether the *Bill*, intitled, An Act to diſſolve the Marriage of Henry Duke of Norfolk, Earl Marſhall of England, with the Lady Mary Anne, and to enable the ſaid Duke to marry again, ſhall be read a ſecond Time?

It was referred in the Negative.

Mark Juſtice, Cler' Parliamentor's.

Woman ſhould dare to ſwear falſe, in a Caſe where two ſuch Witneſſes ſhould be privy to the Perjury.

It follows now to be ſeen, what Courſe has been taken for a thorough Diſcovery of this Intrigue, according to the uſual Methods of Honour and Juſtice. The Examination of Mrs. Sturton by the Duke and my Lord Peterborough, was as follows, firſt and private as the Caſe required; and it was while the Chamber was ſtill too: So that there was no Time loſt when they enter'd upon the Scrutiny. It will be ſeen in that which follows, by what Degrees the Heat of this Calumny cooled, and what brought it to an end.

The Duke and Dutcheſſes went for *Fraser* together, about a Week after the breaking out of this Calumny, and Elizabeth ſtood waited upon the Dutcheſſes, who ſwore, that they went lovingly together, and parted with tears on both ſides; my Lord telling her Grace at parting, that he would fetch her away ſuddenly. They eat and drank together every Day, and were frequently together in private; but he cannot ſay they lodg'd together. So that that far, in all outward Appearance, the Miſunderſtanding ſeem'd, in ſome Meaſure, to be compoſed.

Mr. Scott ſpeaks only to the Matter of Means and Accompt, which is little or nothing to the Purpoſe in this Caſe, except only as to the One Hundred Twenty-and-Five Pounds: mentioned to be paid by him for the Dutcheſſes's Uſe; which was a Quarterly Payment out of Five Hundred Pounds per *Anno*, adjudg'd, and order'd by the High-Commiſſion Court to be paid to her, in lieu of Alimony.

But Mr. Robert Williams comes to the very Merits of the Caſe, and the preſent State of the Queſtion. He depoſes, that in November laſt the Duke ſent for him, and told him (among other Things by the bye), that the Dutcheſſes had ſome Pretensions upon *Coffin-Rings*, and alſo upon *ſilvery*; and thereupon order'd the Witneſſes to give her Grace to underſtand, that if ſhe would conſent to the Sale of ſuch Eſtates, and make the Duke only in that Particular, let her beſt conſider wherein he himſelf might make the Dutcheſſes eaſy too, and upon ſuch Terms he would do it.

His Grace told the Witneſſes further, That there being One or Two-and-Twenty Catholic Heirs to the Family, before one *Proſtitution* he ſays, if (ſays his Grace) I would bring a Bill of Divorce, (I do not ſay it to threaten her) I could obtain it that Account. The Witneſſes acquainted both the Dutcheſſes and the Lady Peterborough, the very ſame Day, with the Subſtance of this Meſſage, her Grace taking it very kindly to be told of a Divorce, and the next Day the Dutcheſſes ſhew'd the Witneſſes a Letter the wrote to the Duke upon this Occaſion, declaring, that for *Coffin-Rings* and *ſilvery* he would never part with them.

It appears from hence, That upon the Examination of Mrs. Sturton, and other neceſſary Enquiries into the Grounds of this Scandal, the Violence of the firſt Impreſſion was far taken off, that according to the Evidence of Elizabeth *Conſell*, my Lord was pleas'd to treat the Dutcheſſes with all Inſtances of Tendereſs and Reſpect, both upon their Fallage into *Fraser*, and upon the Piece there, theſe of the *Red only* excepted. In this ſame Matter he continued four five or fix Years now, without any Speech, or thought of a Divorce, that ever the Dutcheſſes heard of, till the Middle of November laſt, in a Meſſage by Mr. Williams from the Duke, and that was but upon a certain Condition ſenther: however it was improv'd afterwards into a Bill, that upon the ſeventh of January following was formally brought into the Lords Houſe.

The Reader will need no other Light to a true Underſtanding of the

Strait her Grace was in upon this Subject, and the Diſadvantages ſhe was expoſed to, than what he has here ſet before him, in the Order of the Journal itſelf: Where he will find the Dutcheſſes ſeem'd for Time to produce Witneſſes, and prepare her Defence, that it was a wonderful Providence the ſhould do as much as ſhe did; though in the mean while, her Grace had loſt the Benefit of ſeveral conſiderable Witneſſes, for want of Time to find them out, and bring them together. Now as for Mr. Williams's Depoſition, it carries the Conſequence rather of a Treaty than an Accuſation; the Duke's Part is only a calm, deliberate Diſcourſe, conſidering the reciprocal Eaſe both of himſelf and of the Dutcheſſes. Terms are propoſed and granted, and one Word or Glaſs of Reſpect from one End to the other of it. Mr. Williams, (upon the Duke's ſaying him, to the Lords Bar, if by his Diſcourſe he underſtood an Inclination to live with the Dutcheſſes) ſays *no*, did not gather from his Words, as if he had any Thought of living with her; the only bad Thing ſaid, was that about his Catholic Heirs, which ſeem'd to turn the Caſe of Adultery into a Caſe of Religion. Let any Creature judge now, whether the Dutcheſſes durſt to have ſaid it out ſtrict, if he had ſaid any of ſo bad a Crime, when he might have been ſafe and free, as appears by the Propoſal, upon Terms ſo much more eaſy.

To make a ſhort Summary now of the Whole, a Word firſt to the Character and Quality of the Witneſſes.

There is *Oliver*, a Street-Porter, brought in as a Witneſs to the Privacies of the Dutcheſſes's Bed-Chamber, beſides ſeveral unſufferable Exceptions to the Particulars of his Evidence. There is *Edward*, a Cobler's Wife, and a ſilencing little Slut, that's palpably deſtitute of Faſtity as the other. *Hedley*, a poor trucking Footman, that was turn'd off for his ill Behaviour. *Jewell*, a beggarly Wench, that cheated her Landlady, and ſet herſelf in this Caſe at the Lords Bar. *Perſley*, a Painter, and by Intervals a Madman. *Fyler*, a Coachman that was turn'd off by his Maſter, and ſwore to be revenged of him. *Lipſy*, under ſeveral manifold Miſtakes, but nothing to the main Caſe. *Gerke*, *Andoſey*, *Hemmy*, *Reynolds*, and *Margaret Fyler*, ſay not one Word to the Purpoſe. *Wadſworth*, a pilfering Servant, that rob'd her Miſtreſs, and her Evidence moſt notoriously evil.

Now, as theſe Witneſſes are of very little Value upon the ſtock of their own Credit, to the Witneſſes againſt them cannot be deny'd to have a fair Reputation, on the other hand. And it is very extraordinary, that after the naming of ſo many Perſons in their Depoſitions, that laid, or did, or heard, or ſaw this, that the *Proſecutors* have not brought in ſo much as one Creature to ſecond the ſwearing Evidence; though it is ſufficiently known, they could have found them, if they would have ventur'd the Caſe upon that Streſs. It is to be conſider'd once more, what a Difference there has been betwixt the Demourſeur of the one Side and the other, towards the Evidence. What Promiſes, Flatteries, and engaging Obligations on the one Hand, and not ſo much as one Word or Deed, directly or indirectly, that look'd like a Practice or a Prepoſſeſſion on the other ſide of the Dutcheſſes.

Let this be taken in the ſecond Place; for it is a great Miſfortune, when offeſious Inſtruments, that are ſoreworn'd to broach Scandals, meet with eaſy and good-natur'd Diſpoſitions, that are too open perhaps to receive them. This may ſerve in ſome Meaſure, perhaps, to remove the Evidence of thoſe that are not wilfully deaf and blind; and for the reſt, it is left to Time and Providence to bring the Truth to light in its due Season, and to vindicate the Cauſe of the Innocent and Oppreſſed.

XLIV. The Trial between HENRY Duke of Norfolk, Plaintiff, and JOHN GERMAIN, Defendant, in an Action of Trespass on the Case, at the Court of King's Bench, at Westminster, November 24, 1692. 4 W. & M.*

THIS Declaration was a Trinity Term, the Fourth of William and Mary, Knew and Queen. To which the Defendants pleaded Not Guilty, and in Six Years. And it is replied, That it is within Six Years, whereas Time was joined, and a Jury of Twenty-Four Knights and Esquires being returned, Twelve did appear at the Bar, and were sworn, viz.

For the Plaintiff, viz. *A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z.*

For the Defendants, viz. *A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z.*

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Sir The Judge. This you say was seven Years ago? Who did you tell of it?—*Real. Ours.* To the House-keeper.

Sir T. P. *Præs.* Who was he?—*Real. Ours.* One Mrs. Webb.

Sir T. P. *Præs.* Did you tell no body else?

Real. Ours. No, indeed, I said not one.

Mr. Ger. We will call another Witness.

Mr. Ger. Edmund. Do you know the Dutchess of Norfolk?

Mr. Ger. Edmund. Yes, my Lord.

Mr. Ger. Do you know John Germain?

Mr. Ger. Edmund. Yes, my Lord, about seven Years since; but I do not know whether I know him now.

Mr. Ger. Pray tell my Lord and the Jury what you know.

Mr. Ger. Edmund. It was my Business, being House-keeper, to look after my master's Affairs, and I being call'd down, I saw my Lady and Germain; and saw my Lady in an Pallace upon the Stairs, and my Lady said to Germain, *Kid her.*

Mr. Ger. Edmund. Tell how you saw her.

Mr. Ger. Edmund. Why, when I saw her, I saw her bare Knees, and Germain was next to her, and then I came away, she being angry, and so he came from her.

Ques. Was his Breches down?

Mr. Ger. Edmund. His Breches was down, and his Hat and Sword lay upon the Table.

Mr. Ger. What? Were was the Dutchess at?

Mr. Ger. Edmund. I saw her bare Knees, and he—

Mr. Ger. Was the lying down?

Mr. Ger. Edmund. Yes, and the Dutchess after I did see Mr. Germain come in, and he had his Hat on the Table, and unbutton'd himself, and went to Bed to her.

Mr. Ger. How do you know that?

Mr. Ger. Edmund. I open'd the Drawing-Room Door, and look'd through the Key-hole of the other Door where they was, and saw them go to Bed.

Mr. Ger. How do you know he was in Bed with her?

Mr. Ger. Edmund. Why I saw them, and there was a Wax Candle in the Chamber, and I could see them easily.

Mr. Ger. What Time was this you say you saw them in Bed? Had they any Children?

Mr. Ger. Edmund. Yes, my Lord, they had; tho' they were drawn on both sides the Bed, they left them open at the Foot.

Ques. Did you ever pretend this before?

Mr. Ger. Edmund. Yes, I did.

Ques. Did you ever swear this before?

Mr. Ger. Edmund. Yes, my Lord, in the Parliament I did.

Sir The Præs. You have liv'd in several Places since; did you never tell any body's Secret?

Mr. Ger. Edmund. To nobody but Mrs. Webb: And my Lady gave Orders not to mention it, that I should be put away; but I heard no more of it; but I had.

Mr. Ger. Do you know any thing else?

Mr. Ger. Edmund. I was making my Lady's Bed, with one *Ann Burton*, and I found Mr. Germain's Handkerchief and Ruffles in the Bed, at one Time.

Mr. Ger. Do you remember any Shirt and Waistcoat that was found?

Mr. Ger. Edmund. Yes.

Mr. Ger. Did you find his Handkerchief and Ruffles in my Lady's Bed?

Mr. Ger. Edmund. Yes.

Mr. Ger. Did you never let him come down Stairs?

Mr. Ger. Edmund. No, my Lord.

Mr. Ger. It is very much you never saw him come down Stairs.

Mr. Ger. Edmund. We set Traps for him to fall over; but he never came down to fall over them.

Sir The Præs. Do you know of any thing, but in the first Year of King James?—*Mr. Ger. Edmund.* No, my Lord, not I.

Mr. Ger. We will call another Witness, Mrs. Boykin. I think, Mrs. Boykin, you are married?—*Mrs. Boykin.* Yes.

Mr. Ger. What is your Christian Name?—*Mrs. Boykin.* Anne.

Mr. Ger. Pray tell my Lord and the Jury what you know.

Mrs. Boykin. I was House-maid and Servant to the Dutchess, in the last Year of King James's Reign: About *Berlinburgh*, my Lady Dutchess went to *London* with *Germain*, *Nell Gwyn*, and some others, and we did not expect them to come home that Night, but she did, and after they went to Supper, after that they went to Chaise; and then my Lady Dutchess had a great Mind to go to Bed, and bid us to make her a Fire, and so we did; and my Lady went to Bed, and said, 'Till the King and Queen should find for me, I would not stir till Eleven o'Clock to-morrow Morning. So the Candles were put out, and two Footmen stood to wait, because Mr. Germain said to be generous to the Servant; and they waited 'till Two o'Clock in the Morning, I ask'd them whether Mr. Germain had come down? and they said, No; for they had been there all the while; and if he came, he could not go, for they said, We have laid Chains and Smells in the Way, that if he came, he might fall over them; and the next Morning I saw a Man with a Paper-box in his Hand, and he ask'd me for Mr. Germain's Chamber, or Lodgings. I told him, I knew none he had there. My Lord, the next Day, my Lady Dutchess ordered me to make her a Fire, and Mrs. *Kilgus* was coming her Head, and old *Gwyn* came in, and said, Good Morrow to your Grace, how did you rest last Night? she said, very well. Then Col. *Cornwall* came in, and said to my Lady Dutchess, How doth Mr. Germain do? And she said, Why do you ask me? And Col. *Cornwall* said, He did not sit at Home last Night. I then told *Gwyn* said, We shall be five come out by-and-bye like a dreadful Music. And so I

* Two Years in Order of Time, Recalled the Germain the foregoing; but it seems, that Mr. Germain, it was thought proper to state before.

Went to make my Lady Dutchess's Bed, and found a Handkerchief and Rubbers. And Mrs. Knorr. — Yes, Com. how? Tell them you a-bath, and when I came, we lay a Sheet — Waitcoat, and I took them away, because it was a Place where any Body, as they came, might be there. And my Lord Duke was not in Town.

Mr. Gosselin. How came you to take Notice of the Rubbers and Handkerchief?

Ans. Knorr. Why, Mrs. Knorr said it was a Man's Rubbers.

Sir Th. Knorr. How long was this once? — In Eighty-five? Had there not been an Appeal? — Ans. Knorr. Yes, there was.

Sir Th. Knorr. Was there any Thing remarkable in the Bed?

Ans. Knorr. The Bed was stained.

Sir Th. Knorr. What is your Name now, Knorr? — Ans. Knorr. Yes. Sir Th. Knorr. What was your other Name? — Ans. Knorr. Knorr.

Sir Th. Knorr. Was you ever married?

Ans. Knorr. Sir, you know I could have so other Name if I were not married.

Sir Th. Knorr. You have lived in several Places.

Ans. Knorr. I have lived with my Lord of Clive, and my Lord Ferris.

Sir Th. Knorr. Did Garraway go by any other Name than he goes by now? — Ans. Knorr. Not as I know of.

Sir Th. Knorr. My Lord, we will call another Witness. Thomas Haydon, Do you know the Dutchess of Norfolk and Mr. Gosselin?

Ans. Haydon. Yes.

Mr. Gosselin. Pray what did you observe between the Dutchess of Norfolk and Gosselin?

Ans. Haydon. Sir I was a Servant to Mr. Sargent, that was the Dutchess's Steward, and when going away upon other Business, I walked Butcher at Windsor, and there came two Captains to play at Cards, one Captain asked if Mr. Gosselin was there? I told him, No. Now his Man, as I heard after, had brought Gosselin a Sheet and Waitcoat; but, as soon as his Man was gone, we found the Waitcoat and foul Shirt: And the same Day the Dutchess treated the Queen at Windsor.

L. C. J. When was this? — Ans. Haydon. It was in the Year 1685.

Sir Th. Knorr. Was this in the Year 1685?

Ans. Haydon. Yes, it was, for I took it down in my Book.

Mr. Knorr. Did you fence all this before the House of Lords?

Ans. Haydon. Yes, but only the Day of the Month I could not well remember that I had it refreshed my Memory here.

Sir Th. Knorr. We will call Mr. Haydon and Elizabeth Knorr. Mrs. Knorr. Do you know the Dutchess of Norfolk, or Mr. Gosselin?

Ans. Haydon. I knew nothing of them, but that they lay at my House.

Ans. Gosselin. Did you ever see Mr. Gosselin in at your House?

Ans. Haydon. Yes.

Ans. Gosselin. When?

Ans. Haydon. The first Year of King James's Reign.

Ans. Gosselin. How long? — Ans. Haydon. A whole Summer.

Ans. Gosselin. We will call another Witness. Elizabeth Knorr, Did you ever live with Mrs. Haydon? — Elizabeth Knorr. Yes.

Ans. Gosselin. How long? — Elizabeth Knorr. A whole Summer.

Ans. Gosselin. Did you ever see the Dutchess of Norfolk?

Ans. Knorr. Never.

Ans. Gosselin. Did you ever see the Dutchess of Norfolk and Mr. Gosselin together?

Ans. Knorr. No, but Mr. Gosselin's Servant said it was the Dutchess of Norfolk that was with Mr. Gosselin; and as he and I were making the Bed, I found a Handkerchief, marked with an M, and a Corset.

Ans. Gosselin. In whose Bed was this?

Ans. Knorr. Why, it was in Mr. Gosselin's Bed.

L. C. J. How long since?

Ans. Knorr. In the first Year of King James's Reign.

L. C. J. Wherein did you find the Handkerchief?

Ans. Knorr. Yes, my Lord.

L. C. J. What Mark had it? — Ans. Knorr. An M and Corset.

Sir Th. Knorr. You see how far we are gone.

L. C. J. All without the Statute.

Sir Th. Knorr. We shall then your Lordship, and the Gentlemen of the Jury, that my Lady Dutchess went by the name of my Lady Bateson, and Mr. Gosselin went by the Name of her Brother; and that he did take a House at Faux-hall, over the Water, the Man's Name was Somers, and he lived in that Place for three Quarters of a Year and more; and that he and Mr. Gosselin came constantly to her; and it was known to be the Dutchess of Norfolk, though he went by another Name, and her Servant, Henry Roper, also; that his Name was his, that the said Witness gave him a Key to her Chamber at Faux-hall.

[Henry Roper did not appear.]

Ans. Gosselin. Pray do you know one Mr. Gosselin?

Ans. Gosselin. Yes, Sir.

Ans. Gosselin. Pray, did he come to take any House of you?

Ans. Gosselin. Yes, Sir.

Ans. Gosselin. How long since? — Peter Striker. About two Years since.

Ans. Gosselin. Who did he take it for?

Ans. Striker. He told me for a Couple of Ladies that came from Holland, as he told me.

Ans. Gosselin. By what Name went they?

Ans. Striker. One by the Name of Mrs. Bryan, another's Name was Madam Bateson.

Ans. Gosselin. Did you know any Gentleman, called Mr. Gosselin, that lived near the G. R. Hall?

Ans. Striker. Indeed, Sir, I know not where he lived: I have seen one walk in the Garden, that went by the Name of the Lady Bateson's Brother.

L. C. J. Where in your House? — Peter Striker. At Faux-hall.

L. C. J. Who paid you the Rent?

Ans. Striker. One Half-Year, my Lord, was paid by my Lady Bateson.

L. C. J. What servants had he?

Ans. Striker. One that went by the Name of Gosselin.

Ans. Gosselin. We will call another Witness. Elizabeth Knorr. Do you know

the Lady Bateson and Mr. Gosselin? — Ans. Elizabeth Knorr. Yes.

Ans. Gosselin. How often have you seen her? — Elizabeth Knorr. Often.

Ans. Gosselin. Who was this Lady Bateson?

Ans. Elizabeth Knorr. The Dutchess of Norfolk.

Ans. Gosselin. How do you know that?

Ans. Elizabeth Knorr. Because I have seen her coming out of the House of Lords;

and they did it was the Dutchess of Norfolk.

Ans. Gosselin. Are you sure of that? — Ans. Elizabeth Knorr. Yes, Sir.

Ans. Gosselin. Did you know one Gosselin? — Ans. Elizabeth Knorr. Yes, Sir.

Ans. Gosselin. What he is?

Ans. Elizabeth Knorr. I know not, but I heard after, his Name was Knorr, but

when he was on the Lady Bateson, he went by the Name of Gosselin.

Before this, I know not, but I heard after, his Name was Knorr, but

when he was on the Lady Bateson, he went by the Name of Gosselin.

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when he was on the Lady Bateson, he went by the Name of Gosselin.

Att. Gen. Tobs Dagly, Pray give an Account of what you know of the Dutcheſs of Norfolk, and Mr. Germaine?
Tobs Dagly. I was at work there, and I ſaw a Gentlewoman going to and fro, up and down Stairs, and I ſaid, Who that was? And I was told it was the Dutcheſs of Norfolk—There was a brave curious Bed, and I was laying to ſome of the Houſe, that it was a very fine Bed; and asking what it might be worth, they ſaid it coſt Seven Hundred Pounds: And I was then juſt married; ſaid I (I have a mind to bring my Wife hither, and give her a Plurſt upon it), and we laid all our heads together as if we were ſetting the Nation; and then they ſaid, that Bed was for the Dutcheſs of Norfolk; and I ſaw a Perſon there, who they ſaid was the Dutcheſs of Norfolk.

Serj. Birch. *Reverend Ours*, do you know Mr. Germaine at the Cock-Pit?
Rich. Ours. Yes.

Att. Gen. What Company have you ſeen with him?
Rich. Ours. Why, I ſaw a Lady in a Maſk may ſay a hundred times in a Maſk, looking about: Another time, I ſaw my Lord Duke of Norfolk walking among the Trees in the Park, and this Lady looking out of the Window towards him, in Mr. Germaine's Houſe: This I have ſeen, I ſpeak what I know.

Att. Gen. Jane Wadſworth, come, tell my Lord and the Jury what you know, ſpeak not: Do you know Mr. Germaine?—*Wadſworth*. Yes.
Att. Gen. Where liſteth he?

Wadſworth. In Park-Street, near the Royal Cook-Pit.
Att. Gen. Have you ever ſeen the Dutcheſs of Norfolk at Germaine's Houſe?—*Wadſworth*. Yes.

Att. Gen. Upon what Occaſion?
Wadſworth. Living next Door, going in for a Pint Pot, with the Dutcheſs that belonged to the Houſe, and asking her for it, ſhe ſaid, There's never a Pint Pot here; it was above Stairs, and bid me go up and fetch it, and I did; and I ſaw the Dutcheſs at Norfolk there, ſhe had a Night-Gown on, and Flantern-Lace, but in Night-Linens.

Att. Gen. Was ſhe undreſſed?—*Wadſworth*. Undreſſed, as one may think; ſhe might have a Petticoat on.

L. C. J. What Occaſion had you to go there?
Wadſworth. For a Pint Pot, my Lord, and going up, I ſaw the Dutcheſs of Norfolk going from one Room to another: And, my Lord, another time, I ſaw the Dutcheſs of Norfolk and Mr. Germaine in a Coach together.

Att. Gen. When was that?
Wadſworth. It was in March laſt; and when I ſaw the Coachman, I ſaid him who it was that he ſat down out of the Coach; and he ſaid, an honored Gentleman, that gave him Two Shillings for the carrying him from the Norfolk-Forty.

Att. Gen. Have you ever ſeen Mr. Germaine at the Dutcheſs's Houſe?
Wadſworth. I did diſguiſe myſelf, and followed him to ſee where he would go; and I did ſee him go into the Dutcheſs's Houſe at *St. John's*.

Att. Gen. When was that?—*Wadſworth*. In May laſt.
L. C. J. What Time of the Day?

Wadſworth. My Lord, at nine of the Clock at Night.
Sir Tho. Parnell. When you ſay you went for the Pint Pot, did you ever ſay any Thing to any Body of it, that you had ſeen the Dutcheſs of Norfolk?—*Wadſworth*. Yes, to one Man, that I had ſeen the Dutcheſs of Norfolk. Now, ſaid he, if my Maſter had ſeen you to go up Stairs, he would have killed the Dutcheſsman.

L. C. J. Do you know my Lady Dutcheſs well?
Wadſworth. Yes, my Lord, I know her well; ſhe had *Flantern* Horſes ſtood in my Stable, when I kept the *Beer-ho*, and ſhe came often to ſee them; I know her very well.

Serj. Birch. *Reverend Ours*, do you know Mr. Germaine's Houſe?
Ans. Road. Yes.

Serj. Birch. Where is it?—*Ans. Road*. By the Cock-Pit.

Serj. Birch. Do you know him?—*Ans. Road*. Yes.

Serj. Birch. What Company have you ſeen go there?

Ans. Road. In April laſt I ſaw a Chair go by, and ſome Perſons ſaid, That was the Dutcheſs of Norfolk, and ſo I went and ſaw her in the Chair twice.

Serj. Birch. Did you ſee her with her Maſk off?
Ans. Road. I ſaw her with her Maſk off, and ſaw her ſet down at Mr. Germaine's Houſe, and go in a Coach, the Door being immediately opened for her.

L. C. J. Did you know the Dutcheſs before?
Ans. Road. Yes, my Lord.

L. C. J. Did you ſee her before this Time?—*Ans. Road*. Yes, my Lord.

L. C. J. What time of the Day was that?
Ans. Road. Between Two and Three of the Clock.

Att. Gen. You ſay you ſaw her with her Maſk off, and ſet down at Germaine's Houſe, and the Door was immediately opened?

Ans. Road. Yes, my Lord.

Att. Gen. Now we will call another Witneſs, one *Thomas Fyler*. Do you know the Dutcheſs of Norfolk?—*Thomas Fyler*. Yes.

Att. Gen. How did you come to know her?

The Fyler. I loved her once in a Coach with Mr. Germaine.

Att. Gen. How long ſince?—*The Fyler*. About this Time ſome Years.

Att. Gen. Where did you ſit to carry them?

The Fyler. Sometimes into *London* & *Street*, ſometimes to one Place, and ſometimes to another; and I looked back, and ſaw them with their Heads laid together.

Att. Gen. Are you ſure it was the Dutcheſs of Norfolk?

The Fyler. Yes, Sir, I knew her before ſhe was married, and I knew her after.

Sir Thomas Parnell. Did you ſee them with their Heads together?

The Fyler. Yes.

Sir Tho. Parnell. When you was on the Coach-box, you ſay you ſaw them?—*The Fyler*. Yes.

L. C. J. Did you look back to ſee them?

The Fyler. Yes, my Lord, and their Heads were laid together.

Serj. Tremaine. Where do you live now?

The Fyler. With the Duke of Norfolk.

Att. Gen. We will call another Witneſs. Mr. *Broad*, Pray do you know Mr. Germaine?—*Mr. Broad*. Yes.

Att. Gen. Do you know the Dutcheſs of Norfolk?—*Mr. Broad*. Yes, Sir.

Att. Gen. Have you ſeen her?

Mr. Broad. Yes; I ſaw her come out of Mr. Germaine's Houſe, in a Chair, into *St. John's* Park.

Att. Gen. Was it the Dutcheſs of Norfolk?—*Mr. Broad*. Yes.

Att. Gen. Did you know her before?—*Mr. Broad*. Yes, Sir.

Att. Gen. Had you full Sight of her?—*Mr. Broad*. Yes, Sir.

Att. Gen. What appears was ſhe in?

Mr. Broad. In *Man's* Apparel, a Blue Coat and Petticoat.

L. C. J. How long have you known the Dutcheſs of Norfolk?

Mr. Broad. Theſe eight or ten Years.

Serj. Tremaine. Do you believe it was the Dutcheſs of Norfolk?

Mr. Broad. I do verily believe it.

Serj. Tremaine. Do you take it upon your Oath?

Mr. Broad. I do verily believe it: The Dutcheſs being; in a Chair, the Maſk came running out of Mr. Germaine's Houſe after her with a Hand-buſket.

Att. Gen. When was this?—*Mr. Broad*. In April laſt.

L. C. J. Are you ſure it was the Dutcheſs's Hand?

Mr. Broad. She gave in Evidence as ſo in the Houſe of Lords.

Att. Gen. What is her Name?

Mr. Broad. *Frances* Knight, and ſhe had a Hand-buſket in her Hand.

Att. Gen. What did you ſeeſtore in the Hand-buſket in her Hand?

Mr. Broad. I ſuppoſe there was Clauſes, for I ſaw the Tip of a Coat, or Gown, hang out.

Att. Gen. My Lord, we have brought this down to ſer—

L. C. J. Way, all it is within the Statute, I muſt direct the Jury.

Att. Gen. We have told you when it began. However, we will call another Witneſs.

Serj. Tremaine. *Mary Hall*, do you know Mr. Germaine?

Mary Hall. Yes, Sir.

Serj. Tremaine. Do you know where he lives?

Mary Hall. Yes, at the Royal Cook-Pit, in Park-Street.

Serj. Tremaine. Did you ever ſee the Dutcheſs of Norfolk in your Lifetime?

Mary Hall. I cannot tell whether I did or not, for I do not know her, ſhe cannot tell when I do for her.

Sir W. Williams. They have called about nineteen Witneſſes; for the fifth five we paſs over them, ſee they did not ſpeak one Word of any Thing ſince 16: And for the other, they have not proved any one Act in the Time of the Declaration between Mr. Germaine and the Dutcheſs of Norfolk: They have not proved any Thing that hath any Tendency to it: They have not given any Manner of Evidence. If there be any Thing that hath any Tendency, it is that which *Tobs Wadſworth* ſaid: And what is it that ſhe ſaid? Why, ſhe ſaw a Woman that ſaid ſhe had let a Pint Pot to go to Mr. Germaine's Houſe, ſhe went for it, and the Dutcheſsman that lived there, directed her to go up the Stairs for the Pint Pot. She ſometimes, that ſaw the Dutcheſs of Norfolk, and ſhe had a Petticoat on, and then it is the Evidence that the law gives. Sir, do not pretend that Mr. Germaine was in the Houſe, or in Company with the Dutcheſs; and the appearance to be a Stranger in the Houſe, and yet the ſaid run up Stairs. As for her Reputation, ſhe is one of the vileſt of Women. She would ſay ſomething in *March* or *May* laſt, but there is no Act proved by her; and ſhe is a ſole and incredible Witneſs, we ſhall call Witneſſes to ſwear it.

Sir Tho. Parnell. My Lord, for this Woman *Wadſworth*, we will not only call the Perſon ſhe ſpoke to of this, that will contradict her, and ſo what ſhe ſaid, ſay, but go to her Credit and Reputation. So that now, my Lord, I ſuppoſe, upon the whole Matter, we cannot do any Duke of Norfolk more Honour, than to acquit the Defendant; for it will be moſt Honour to the Duke of Norfolk to have the Defendant acquitted, than Satisfaction to him by giving him any Damages whatever.

Sir W. Williams. We will now call our Witneſs, *Grace Cook*. Do you know *Jane Wadſworth*?—*Grace Cook*. Yes, Sir.

Sir W. Williams. Tell my Lord, and the Jury, what Diſcourſe you and *Jane Wadſworth* have had together.

Grace. I will. She and I had ſome Talk together; and ſhe then ſaid, I could do them no Good, for I was miſtaken.

Sir W. Williams. When did ſhe tell you this? During the Sitting of the Parliament?

Grace. Yes: She came in and ſaid, I can do them no Good; for, ſaid ſhe, I did go into Mr. Germaine's Houſe, and thought I had ſeen the Dutcheſs of Norfolk, but now I ſee I am miſtaken.

Sir W. Williams. You are a new Neighbour to her?—*Grace*. Yes, Sir.

Sir W. Williams. What is her Reputation?

Grace. I cannot ſay any Thing to her Reputation.

Sir W. Williams. Who was by?

Grace. There was another Woman.

Jane Wadſworth. I had a Sakeſman, and ſo I was going to Mr. Germaine's Houſe, there was one of his Servants, and I had like to have been knocked down: And there was one *Edith*; What, ſaid he, you are to go to be Witneſs? What, you will ſwear that the Dutcheſs lay with Mr. Germaine? And another ſaid, I delivered to be at *Bridewell*.

L. C. J. Who was it that told you that you delivered to be at *Bridewell*?

Jane Wadſworth. *Edith*, his Footman. My Lord, it was not a Footman ſince I was rebbed: And it is not a Footman ſince there came in Perſons, and threatened me, and ſaid what they would do to me. It is not two Months ſince, that a Perſon or two did hate me, and had like to have knocked me down; and they ran into this Woman's Houſe (*Grace Cook's*).

Serj. Tremaine. You are aſſerted, if theſe Perſons that had like to have knocked you down, did not run into Mrs. *Cook's* Houſe?

Jane Wadſworth. Yes.

XLV. *The Proceedings against the Bishop of Rochester * before the Lords of the Privy Council, 1692, & Will. & Mariz, in Relation to a Plot to Restore King James the Second.*

Written by the Bishop himself.

ON Sunday, the seventh of May, of this present Year 1692, in the Evening, as I was walking in the Orchard at Bromley, meditating on something, I designed to preach the next Day, I saw a Coach and four Black Boys at the Gate, out of which two Persons alighted. Immediately I went towards them, believing they were some of my Friends coming to give me a Visit. By that Time I was got to the Gate, they were entered into the Hall, and met me about the Middle of the Court. The Chief of them pressing me to look willy on them, I knew absolutely nothing of them, for, as my Lord, perhaps you do not know me; my name is Dyer, I am Clerk of the Council, and live in one of the King's Mansions, I am sorry I am not on this License, but I am come to dwell in upon such, and such of His Friends.

Now, said I, I suppose you have a Warrant for so doing; I pray let me see it. He showed it me. I read it, and the first Name I lighted on being the Earl of Sandwich's, I said, I believe that is my Lord's Name; I am ever Ready, and I submit. What are your Orders how to dispose of me? My Lord, said I, I must first search your Person, and I shall take the Keys with him about you. My Keys I presently gave him. He searched my Pocket, and found no Papers, but some poor Notice of a Sermon, and a Letter from Mr. B. I saw about ordinary Business.

Now, said I, My Lord, I must require to see the Rooms to which these Keys belong, and all the Places in the House where you have any Papers or Books. I straight conducted him up Stairs into my Study. This, Sir, said I, is the only Chamber where I keep all the Books and Papers I have in the House. They began to search, and with great Readiness turned over every Thing in the Room, and Closet and Preface, flaking every Book by the Case, opening every Part of a Chest of Drawers, where were many Papers, particularly some Bundles of Sermons, which I told them were my paper Tools, and that all that knew me, could vouch for me, it was not my Custom to have any Treason in them. They read several of the Treaties, and left them where they found them. But in one Corner of a Press, which was half open, they met with a great Number of Letters, tied up. Insured them they were only Matters of usual family Correspondence, and most of them were of last Year's Date. My Lord looking on some of them, found them to be so, and said, if he had Time to view them all, he might, perhaps, be Reason to leave them behind, but being expressly commanded to bring all Letters, he must carry them with him. I let him take as he pleased, so they found them all.

Then they went into my Bed-chamber, and the Cooks adjoining, doing as they had done in my Study, feeling about the Bed and Hangings, and knocking the Window in several Places, to see if there were any pins or Holes, or small Conventances.

After that, they came down Stairs, and searched the Parlour and Drawing Room in the Side of the House with the like Exactness. In all these Rooms I beheld them very carefully pressed into every Part of the Chimneys, one of them putting his Hand into every Flower-Pot, which I then perceived to be searched: But here I found he had but too much Reason to do so.

When they had done searching in all these Rooms, and in the Hall, as they were going out, and had taken up with them what Papers they thought fit, they carried me away in the Coach that brought them. By the Way, we met my Servant, Mr. Ash, coming from London. I called out to him, Have you any Letters for me? He gave me three or four, which I delivered to Mr. Dyer to open, who found nothing in them but Matters of private Conversation, or ordinary News. And to between Ten and Eleven at Night we arrived at Whitehall, and I was brought to my Lord Nottingham, whom I found alone in his Office.

My Lord, said I, I am come upon your Warrant, but certainly there must be some great Misdemeanor, or black Villainy in this Business. For I declare, as in the Presence of God, I am absolutely free from any just Accusation relating to the Government. My Lordship said to me, He himself was much surprized when he heard my Name mentioned. I intreated him I might be examined that Night, at any Whitehall could be produced against me. He said, That could not possibly be, because the Lords, who had the Management of such Affairs, were separated, and gone Home. But that I was to appear before them the next Day, and in the mean Time, all the Country should be given me, that could be expected by a Man in my Condition.

My Lord, said I, I hope, it being very late now, you will find me to be in my own House at Whitehall. He replied, You shall do so; but you must have a Guard of Soldiers, and a Messenger with you. A Guard of Soldiers, said I, My Lord, I think it not so necessary to secure one of my Position, I should be better off, that I may have two or more Messengers to keep me, though that may put me to greater Charge. My Lord, said he, I, for my own Part, would be glad if I might take your Parole, but I must do what I may answer to others, and therefore I pray be content.

At this I acquiesced, only a little. My Lord, here are three Papers brought up with me, which upon my Oath, are but of common Importance, yet, because they are sent of them private Talk among Friends, they may be some Expressions, which no Man, if it were known, could be willing to have divulged; and therefore I desire your Lordship will take Care they may not be shown to the Prejudice of any. He answered, You are to do with Men of Honour. And you shall have no Occasion to complain upon that Account.

And to my own conveyance Home as Whitehall by Mr. Dyer and Mr.

Kings, Messengers, in the Coach with me, and a Guard attending on each Side. After we came to the Damer, Mr. Dyer having diligently searched my Lodgings, and the Armour to them, left me about Midnight, with a strict Charge to the Messengers, and to bid them, not to give me any unnecessary Disturbance; but to watch carefully at my Bed-Chamber Door, till further Orders, which they did.

The next Day, being Sunday, the eighth, Mr. Dyer came again to my own House, to acquaint me, that I was to attend the Committee of the Council that Evening by Six of the Clock. And, said he, My Lord, I suppose you have heard of Mr. W. Ansell, a Man whom you keep in ret of your Books and Papers. I told him, I had. Then, said he, I have a Commission to fetch him hence, likewise, in your Chamber. I showed him my Library, and gave him the Keys. He opened all the Preface of Books, and view'd particularly as he said, and examined every Drawer in the Cabinet; but finding nothing, except of a late Date, or that might affect any the least Shadow of a treasonable Correspondence, he went away without removing one Paper at all.

At the Time appointed, I was brought by the Messengers and Guard to Whitehall, where a select Number of the Lords of the Council were assembled at my Lord Nottingham's Lodgings. There were present, viz. I remember) the Earl of Sandwich, Lord Seaward, the Earl of Dorset, Lord Chamberlain, the Earl of Newcastle, Secretary of State, the Earl of Rochester, the Earl of Portland, the Lord Sydney, Lord Lansdowne in Ireland, and Sir Edward Seymour.

When I was entered the Room, and come to the End of the Table, my Lord Nottingham began.

Earl of Nottingham. My Lord, you cannot but think it must be some extraordinary Occasion which has forced us to send for you hither in this Manner.

Bishop of Rochester. Which I submit to the Necessities of State, in such a Time of Jealousy and Danger as this is.

Earl of N. My Lord, I am not at all your form. Questions, to which we desire your plain and true Answer.

Bishop of R. My Lords, I assure you none shall be such, as, I hope, I have been always taken for a Man of Simplicity and Sincerity.

Earl of N. Have you composed a Declaration for the present intended Defense of the late King James our England?

Bishop of R. I call God to Witness, I have not.

Earl of N. Did you ever draw up any Heads, or Maxims for such a Declaration?

Bishop of R. Upon the same solemn Assurance, I never did.

Earl of N. Were you ever solicited, or applied to by any Person, for the undersketching such a Work?

Bishop of R. I never was.

Bishop of R. Do you hold any Correspondencies abroad in France?

Bishop of R. I do not hold any.

Earl of N. Have you ever signed any Association for restoring the late King James?

Bishop of R. I never signed any.

Earl of N. Do you know of any such Association? Or any Person that have fabricated one?

Bishop of R. Upon the Word of a Christian, and a Pious, I know of no such Thing; nor of any Person who has fabricated any Paper of that Nature.

Sir Edward Seymour. My Lord Bishop of Rochester, We have examined the Papers that were seized in your Closet at Bromley. We find nothing in them but Matters of ordinary and innocent Conversation among Friends, only one Letter one Surplus. What there are few or no Letters among them written since last Day last.

Bishop of R. Sir, I suppose there may be some of a Date since that Time in the Bundle. If I had perceived more, they would be a sign of the same Nature with the rest that you have, that is, some mingling common Intelligence, and the Talk of the Town, not any Matters of State, or against the Government in it. I assure, I hold no Correspondencies of that Kind. When I am in the Country, I desire some Friends or others here, to let me know how the World goes, if I may inform myself, and the neighbouring Gentlemen, of the State of the City, and procure the spreading of false News. And afterwards, I take up such Letters, according to their Dates, as you may please. I did think, that at any Time I may have a private Recourse to them to refresh my Memory at any public Transactions.

My Lords, Those are all I thought worth keeping of this Kind these two last Years: And I hope the Clerk of the Council has done me the Justice to acquiesce your Lordship, how I was apprehended, out of my House, and in my naturally I rest, and my Study, and Lodging-Chamber, and other Rooms, were visited. So that it was impossible for me to have suppressed or suppressed any one Writing from you, and really I believe there were not a Nine, out of 10 up of Paper at any Correspondence in my Possession, but they had a View of it.

Earl of Dorset. But, my Lord, it is probable a Man of your Integrity and Acquaintance, must have received more Letters since than are to be found. We see here are many concerning Affairs that passed just before this Time.

Bishop of R. My Lords, A little before the Conclusion of the last Session of Parliament, I received Leave of the House of Lords to return into the Country for the Recovery of my Health. During my Absence there, as long as the Parliament continued, I was incessantly engaged to attend

General, and the Petitioner's Attorney-General, in the Court of King's-Bench, 22nd of the instant Month of January, 1693, at which time the said Petitioner, it is ordered by the Court, should be heard in person, and by his Counsel, and by his Attorney-General, in the Court of King's-Bench, at ten of the Clock in the Afternoon, and that the said Petitioner should be summoned then to attend.

A Debate arising thereupon, in the Court of King's-Bench, relating to the Petitioner's Attorney-General, and the Title of Earl of Salisbury. The Question was put, Whether the Attorney-General shall give this House an Account what Proceedings have been taken in the Court of King's-Bench, since the eleventh of April, 1693, in Relation to the Person who claims the Title of Earl of Salisbury?

It was ordered in the Affirmative. It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Majesty's Attorney-General do give this House an Account on Tuesday the fourth Day of December next, what Proceedings have been taken in the Court of King's-Bench, relating to the Person who claims the Title of Earl of Salisbury, since the eleventh of April, 1693, and that all the Lords be summoned then to attend.

4 Dec. 1694.

After their Majesties Attorney-General had given the House an Account of the Proceedings in the Court of King's-Bench, in Relation to the Person who claims the Title of Earl of Salisbury, and Debate thereupon, The Question was put, Whether the House shall be now adjourned?

It was adjourned to the next Day. Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the proper Officer in the Court of King's-Bench bring before this House, To-morrow at eleven of the Clock, the Record of the Judgment of Charles Kermack, who claimed the Title of Earl of Salisbury, and the Proceedings of the Court thereupon.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Debate to Day touching the Proceedings in the Court of King's-Bench, in Relation to the Person who claims the Title of Earl of Salisbury, shall be adjourned till To-morrow Morning, eleven of the Clock at the farthest.

5 Dec. 1694.

The Record of the Court of King's-Bench being this Day brought into the House, (pursuant to the Order Yesterday) relating to the Person who claims the Title of Earl of Salisbury, and a Debate arising thereupon, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Debate shall be, and is hereby adjourned until Wednesday next, the twelfth Day of this instant December, at ten of the Clock in the Forenoon.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Records of the Court of King's-Bench, brought in this Day, shall be returned to the proper Officers, and that they attend with them again, on Wednesday the twelfth Day of this instant December, at ten of the Clock in the Forenoon.

12 Dec. 1694.

This Day being appeared to refuse the foresaid Debate, concerning the Person who claims the Title of Earl of Salisbury, and for the proper Officers of the Court of King's-Bench, to attend with the Records of that Court relating thereto, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Debate shall be, and is hereby adjourned, till Monday the twenty-fourth Day of this instant December, at ten of the Clock in the Forenoon, and that the proper Officers of the Court of King's-Bench do then attend with the Records as was formerly ordered.

26 Jan. 1697.

A Petition to his Majesty being this Day offered on Behalf of the Person who claims the Title of Earl of Salisbury, and his Majesty's Reference thereupon, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Petition and Reference shall be considered on Saturday the twenty-ninth Day of January instant, at twelve of the Clock, and that all the Lords be summoned then to attend, and the Clerks then bring the Books wherein the former Proceedings in Relation to this Matter are entered.

30 Jan. 1697.

The Order being read for considering the Petition of the Person who claims the Title of Earl of Salisbury, and his Majesty's Reference thereupon in this Day, was read as follows:

To the KING'S Most Excellent Majesty, The humble Petition of Charles Kermack, Son and Heir of Nicholas, Brother and Heir of Edward, Son and Heir of William, late Viscount Wallingford, and Earl of Salisbury,

Sheweth, That his late most Excellent Majesty King Charles the First, by his Letters Patents, under his Great Seal of England, bearing Date at Cambridge, the sixth Day of August, in the second Year of his Majesty, of his special Grace, certain Knowledge, and mere Motion, did create and create William, then Viscount Wallingford, to the State, Degree, and Honour of Earl of Salisbury, and did give to him the Name, Style, and Deputy thereof, and with the same Name, Degree, and Deputy of Earl, did really invest, and constitute him, to hold the same to him the said William, and the Heirs-males (his Body dying for ever) That by Force of these Letters Patents, the said William became seized to him, and the Heirs-males of his Body, of the said Earldom, and accordingly had and enjoyed Place and Precedency in the House of Peers as an Earl of this Kingdom. That the said William died seized, leaving Edward and Nicholas his Issue. That Edward died under Age, and without Issue, whereas the said Title descended to your Petitioner's said Father Nicholas, and he became thereby rightfully entitled to the said Name, Title, and

Dignity, and was accordingly created, seized, and invested an Earl of Salisbury, and as such sat in the House of Lords, in the said House of Peers, upon the Restoration of King Charles II. That your Petitioner, being then a young Man, the Predecessor of the said Nicholas, your Petitioner's said Father, then Duke of York, prevailing upon your Petitioner's said Father, was forced to surrender and resign the said Title and Dignity of Earl of Salisbury, and as such sat in the House of Peers, and as such enjoyed his Legacy and Hereditary, in your Majesty's House of Peers, and exercised the same, as your Petitioner's said Father, and as such a Report accordingly, in answer of his Right, as he then sat in the House of Peers, was fully approved: That by his Majesty's said Title and Dignity descended upon your Petitioner, as he then sat in the House of Peers, and as such enjoyed the said Title and Dignity, and as such performed for killing Philip Lawton, your Petitioner did, for his said Title and Dignity, and as such according to the Laws of this Realm, by the Permission the House of Lords thereupon, whereas your Petitioner's said Title and Dignity, and according to the legal Methods in Case of the Death of a Peer, and as such, to have made his Application to your most Excellent Majesty at the Foundation of all the Honours within this Realm, and as such, the said Title and Dignity was forfeited. And your Petitioner's said Title and Dignity, by the Name of Charles Kermack, and upon his Arrival in this House, your Petitioner did plead the said Title and Dignity, and as such, in Manner aforesaid, and that therefore his Name was put down in the House of Peers, to which your Majesty's Attorney-General, your Petitioner's said Father, the said Petitioner, and after many long Arguments, he came upon the Bench, by the Right Honourable the Lord Chief-Justice, and as such, the Judges then, in Favour of your Petitioner's Name and Title, that your Petitioner should likewise inherit by the Name of Charles, Earl of Salisbury, for the same Office, and that the same was undisturbed, for the Reasons aforesaid. That by Reason of the Premises, your Petitioner did suffer long Imprisonment, and great Expenses, and is still under the same Accusation, by the Name of a Peer, and as such has been taken upon the Roll of Peers, and during your Petitioner's Absence, Writs have issued out of your Majesty's Court of Chancery, for the same Charge as a Peer, which he hath been refused.

Now, therefore, as your Petitioner humbly conceives himself well entitled to the said Title and Dignity, and that your Petitioner may the better be enabled so to do, and manifest his Zeal for your Majesty's Service, as by the Duty of his Allegiance he is obliged,

Your Petitioner humbly prays your Majesty's tender Consideration of the Premises, and that you would be pleased to declare your Royal Pleasure in Favour of your Petitioner's said Right, by restoring him a Writ of Summons to Parliament, or to recommend your Petitioner's Cause to an Examination by the Lords Spiritual and Temporal in Parliament assembled, in order to your Majesty's more certain Information of the Truth of the Premises; or otherwise to do hereto, as your Majesty's great Wisdom shall best direct.

And your Petitioner shall, as in Duty bound, daily pray for your Majesty's, &c.

BANBURY.

William R.

WE are greatly pleased to refer this Petition to the House of Peers, to consider the Petitioner's Claim and Title therein mentioned, and to certify us how the same shall appear to them, with their Opinions thereupon. Given at our Court at Kensington, the 18th Day of January 1697, in the sixth Year of our Reign.

By his Majesty's Command.

JA. VERNON.

After Debate thereupon, These Lords following were appointed to draw up a Representation to be presented to his Majesty, in what Proceedings have been formerly in this House, in relation to this Matter, and report the same to this House.

Dux Bevil, &c.

Dux Bevil, &c.

Their Lordships, or any five of them, to meet on Tuesday next, at eleven of the Clock in the Forenoon, at the Prince's Lodgings, near the House of Peers.—And it is ordered, That this Committee do meet again on Thursday the third Day of February next, at eleven of the Clock, in the same Place, to consider of the Proceedings of the Court of King's-Bench, since the Judgment of this House, 17th of January, 1693, in relation to this Matter, and have Power to send for Persons, Papers, and Records, and report in this House their Opinion thereupon.

3 February, 1697.

The Earl of Salisbury reported to the Committee the Representation drawn by them to be presented to his Majesty, in relation to the Proceedings in this House, upon the Petition of a Person who claims the Title of Earl of Salisbury, which was read, and agreed to as follows, viz.

We the Lords Spiritual and Temporal in Parliament assembled, having received a Petition to your Majesty, from a Person who claims the said Title of Earl of Salisbury, did a Writ of Summons to sit as a Peer in Parliament, do hereby certify to your Majesty, That about five Years since, the same Person did petition the House of Lords; That being introduced for the Death of Philip Lawton, he might be admitted to his Trial by his Peers; and that if any Question should arise thereupon, that he might be heard by his Counsel at the Bar of the House: Upon which the Lords did order the Petitioner to be heard by his Counsel at the Bar of this House, for the making out this Title to the said Earldom; and also your Majesty's Attorney-General to be heard on your Majesty's Behalf; and upon full Hearing on both Sides, the House came to this Resolution and Judgment,

That

That the Petitioner had no Right to the Title of Earl of Banbury, and ordered his Petition to be dismissed; which Judgment, the Lords have given Reason to believe, was not made known to your Majesty at the Time of making this aforesaid Reference. All which is humbly represented to your Majesty.

Ordered, That the Lords, with which Series, do attend his Majesty with the R. Proclamation of this House, concerning the Person that claims the Title of Earl of Banbury.

7 February, 1667.

The Earl of Rochester having offered to the House what he was ordered to report from the Lords Committee, appointed to consider of the Proceedings, in the Court of King's Bench, since the Judgment of this House, the 17th of January, 1667, in relation to the Person who claimed the Title of Earl of Banbury, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That this Matter shall be considered on the 24th next at Eleven of the Clock.

10 February, 1667.

After reading this Day the Reports from the Lords Committee, appointed to consider of the Proceedings in the Court of King's Bench, since the Judgment of this House, the 17th of January, 1667, in relation to the Person who claims the Title of Earl of Banbury, and finding for, and hearing the Lord Chief Justice of that Court, and Mr. Justice Eyre, to the Lords Spiritual and Temporal in Parliament assembled; It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That this Debate shall be, and is hereby adjourned to Monday next, at Eleven of the Clock in the Forenoon, and that the said Lord Chief Justice, and Mr. Justice Eyre, do then attend, and also use other Judge of each Court in Westminster-Hall.

But there was no further Proceeding in this Business.

The Proceedings in the House relating to the Title of the Earl of Banbury, before 22 March, 1667, as follows:

Earl of Banbury. 13 July, 1660.

It was moved, That there being a Petition read now six in this House as a Peer, who, as it comes out, hath no Title to be Peer, so the Earl of Banbury, It is ordered, that this Business shall be heard at the Bar by Council, on Monday come Next Night.

6 June, 1661.

The Lord Great-Chancellor, signified to the House, That the King appointed him to deliver a Paper to their Lordships Consideration, which was presented to His Majesty, and the House commanded the same to be read, which was done, viz.

To the KING's Most Excellent Majesty,
The humble Petition of Nicholas, Earl of Banbury,

THAT your Majesty's Royal Father, King Charles, by his Letters Patent, under the Great Seal of England, bearing Date the eighteenth of April, 1657, for the great and many Services done by your Petitioner's Father, Sir William Knowles, Knight, and Viscount Wallingford, granted to him, and his Heirs Males of his Body issuing, the Name, Title, and Dignity of Earl of Banbury, with all Privileges of State, and Voice in Parliament, as other Peers of the Kingdom hath, so by the said Letters Patent more fully appears.

That the said Earl, after marrying with Elizabeth, Daughter of the Earl of Suffolk, had Issue by her, Edward, his eldest Son, who died without Issue, and your Petitioner was born in January, 1630, about a Year and a Half before the said Earl's Death.

That your Petitioner, as Son and Heir of the said late Earl, sat in last Parliament as Earl of Banbury, as of Right he might, and hath often and had all Privileges as other Earls there, but having no Writ of Summons to this present Parliament from your Majesty, as other the Peers have, hath forborne to sit there, although he hath done nothing to deprive himself of his Title therein, nor to his Knowledge to incur your Majesty's Displeasure.

Your Petitioner therefore humbly prays, That your Majesty will be graciously pleased, that he may have a Writ of Summons to this Parliament, as Earl of Banbury, and enjoy all the Privileges and Privileges thereunto belonging, granted by your Majesty's Royal Father, by his said Letters Patent.

And your Petitioner shall acknowledge your Majesty's Justice therein, with due Gratitude, and with all Alacrity and Fidelity endeavour to serve your Majesty with his Life and Fortune, and ever pray for your Majesty's long and happy Reign.

BANBURY.

It being read, the Lord Chancellor acquainted the House, That His Majesty signified his Pleasure to him, that no Writ should be issued out to summon the Earl of Banbury to this Parliament, upon some Question that was made in this House last Parliament, concerning him.

Wherein it is Ordered, That the said Petition, and Contents thereof, be forthwith referred to the Lords Committee for Privileges, who having heard the Petitioner by his Counsel, or otherwise, and Mr. Attorney-General on the King's Behalf, are afterwards to make Report thereof to this House, and the Lords Committee shall then when they please.

15 June, 1661.

Upon Report of the Committee of Privileges, That the Earl of Banbury desires large Writs may be granted on his Behalf, among whom a Peer of the Court of Banbury, It is Ordered, That the Committee have liberty Power to send for each Witness if they think fit, observing such Decency as the Quality of the Person requires: And further, That Mr. Attorney-General do bind that Committee on Monday next in the Afternoon.

20 June, 1661.

Ordered, That the Report from the Committee of Privileges, concerning the Earl of Banbury, shall be made on Friday the twenty-seventh of this instant June.

1 July, 1661.

Upon the Report this Day made, concerning the Petition of Nicholas Earl of Banbury, formerly brought into this House by a Peer of this Realm from his Majesty, whereby the Petitioner prays a Writ of Summons to this Parliament, as Earl of Banbury, and to enjoy all the Privileges and Privileges thereunto belonging, granted by his Majesty's Letters Patents to the said Earl of Banbury, It is Ordered, That the Cause shall be heard at the Bar on Monday, the eighth Day of this Instant July, by Council, and Witnesses are to attend at the said Hearing; at which Time, Mr. Attorney-General, and others of his Majesty's Council, (having timely Notice given) are likewise to be heard on the King's Behalf.

9 July, 1661.

This Day the Cause of Nicholas Earl of Banbury, upon his Petition, wherein he prays a Writ of Summons to this Parliament, as Earl of Banbury, and to enjoy all the Privileges and Privileges thereunto belonging, granted by His Majesty's Letters Patents to the said Earl of Banbury, was heard by Council on the Earl's Part; and also Mr. Attorney-General, Sergeant Maynard, and Sergeant Glyn, Counsel on the King's Behalf, were heard; and as regard it was now late, It is Ordered, That the Resolution of this Business shall be taken into Consideration To-morrow Morning.

10 July.

Upon Consideration of the Business of the Earl of Banbury, heard at this Bar Yesterday, and after a long Debate thereof, It is Ordered, That the Matter now in Debate, concerning the Earl of Banbury, is referred to the Consideration of the Committee of Privileges; and also the Matter of the Right of Precedency between the said Earl of Banbury, and several Peers of the Realm, and to make Report thereof to this House, the Committee to meet on Monday next, at Three of the Clock in the Afternoon.

19 July.

The Earl of Northampton reported from the Committee of Privileges, that their Lordships have considered of the Earl of Banbury's Business referred unto them, and their Opinion is, That the Earl of Banbury is, in the Eye of the Law, Son of the late William, Earl of Banbury; the House of Peers should therefore advise the King to send him a Writ to come to Parliament.

After their Lordships are of Opinion, that the Earl of Banbury ought to have Place at the House of Peers, according to the Date of his Patent, and not according to the Time of this Petition, which ranks him before other Earls created before William, Earl of Banbury. All which the Committee offer to their Lordships Judgment.

Ordered, That this House will take this Report into Consideration To-morrow Morning.

25 July.

Ordered, That on the second Thursday after the next Meeting of this House, after the Adjournment, this House will take into Consideration the Report of the Earl of Banbury's Business.

18 Nov. 1661.

The House took into Debate the Report concerning the Earl of Banbury formerly made to this House; and the Question being put, Whether to put off the Consideration of this Business to a further petitioned Day? It was resolved in the Affirmative.

9 Dec. 1661.

An Act was read a first Time, declaring Nicholas, Earl of Banbury, to be illegitimate.

26 Dec. 1661.

Upon calling of the House of Peers this Day, the House taking Notice that the Earl of Banbury's Name is not as the List by which the Lords were called, It is Ordered, That it be referred to the Committee of Privileges, to examine why the said Earl of Banbury's Name is left out of the said List, he having formerly sat as a Peer in this House, and to pursue all former Proceedings in this House concerning him, and to make Report thereof to the House.

25 Nov. 1660.

The Earl of Essex reported to the House, that the Committee of Privileges, in pursuance of the Order of this House, have examined their Proceedings concerning the Earl of Banbury, the Order certified of Two Parts, First, Why his Lordship's Name was left out of the List of the Peers, touching which the Lords have spoken with Sir Edward Waller, Principal King of Arms, who delivers in the List, and he produced a Book out of the Herald's Office, where it appears that the said William, Earl of Banbury, died in the Year 1632, and having had two Wives, left no Children.

Likewise he produced a Roll, being a Procedure of the King and the Peers to Parliament in 1640, in which List there is no mention of the Earl of Banbury's Name among the Peers.

Upon these Grounds the said Edward Waller left out the Name of the Earl of Banbury in his List given unto this House.

The second Part of the Order was so presented to the House, as Account of the former Proceedings, in this House, concerning the Earl of Banbury, and the Lords Committee said, That 6 June, 1661, viz. being a Record of the Proceedings before that Day.

21 Feb. 1660.

A Petition was presented to this House from the Earl of Banbury, which was read as follows:

To the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled,

The humble Petition of Nicholas, Earl of Banbury,

Sheweth, THAT your humble Petitioner hath the Honour to be a Peer of this Realm by Descent, and is legally entitled by Right of Inheritance, to the Dignity and Honour of the Earl of Banbury, and ought therefore to have and enjoy his Voice and Seat in Parliament, and all other Preeminences to such Dignity belonging; and hath always, in all Taxes, and Payments of Poll-Money, and Beneficences, paid such Sums, and as such Proportions, as to the Quality and Degree of an English Earl do appertain.

Nevertheless your Petitioner hath not it had the Honour to receive from his Majesty such a Writ of Summons to Parliament as is usually granted to other Peers of this Realm. Wherefore, since your Petitioner is well assured that no legal Impediment can be objected and proved against him, he most humbly prays this Most Honourable House sheweth that he may receive such a Writ of Summons to the Parliament now sitting, as may enable him to serve His Majesty there, according to the Duty of his Place and Quality.

Ad. vnc. Petitioner. Roll. ser. 10.

Upon this the House made this Order follow

Upon every the first day of Great Auditing
Up on reading the Lumb's Petition of A. J. Earl of Sandwich this
Day, p^{er} jury that he has received such a Writ of Summons to the Parlia-
ment now set up, as may enable him to see it. He mildly there, ac-
cording to the Duty of his Place and Quality, is O-bound, That the
said Petition be referred to the Lords Commissioners for Privileg^e, whose
Lordships having considered thereof, are afterwards to report thereon
Onwards to the House.

10 June, 1685.
Upon reading the Petition of a Person that claimeth the Title of Earl of Arundell, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That it be referred to the Lords-Commissioners for Privileges, to examine all former Proceedings of this House, relating to that Case, and to report the same to this House.

The Earl of Arundell repaired from the Committee of Privileges, that their Lordships had read the Petition of the Baron that claimeth the Title of Earl of Baskerville, referred by the House to them to examine all former Proceedings of the House relating to that Cause; that their Lordships find, &c. being a Narrative of all Proceedings before recited. Whereupon the following Order was made:

Upon the Report of the Committee for Privileges of the State of Providence, in the Journals of this House is the following referred to them, concerning the Claim of a Person to the Title of Earl of Besbury. It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That this House will hear His Majesty's Attorney-General on His Majesty's Petition against the said Claim, as also Counsel for the Person who claims the said Title of Earl of Besbury, on Monday the Sixth of July next, at Ten of the Clock in the Forenoon.

Upon making the Petition of a Person that claims the Title of Earl of *Barnard*, it is Ordered by the Lords Spiritual and Temporal on Petition sheweth, That this House will hear His Majesty's Attorney-General on His Majesty's Behalf, and all other Person that may be concerned therein, *and* *not* the said Claim, as also Counsel for the Person who claims the said Title of *Earl of Barnard*, on *Monday* the third day of *January* next, at Ten of the Clock in the Forenoon, whereas the Petitioner is to cause timely Notice to be given to His Majesty's Attorney-General, and all other Persons that may be concerned in the said Claim,

q. *January, 1862.*
 After hearing Comds this Day at the P. M., upon the Petition of the
 Petition that it *do* dissolve the Title of *Earl of Derby*, and Their Majesties
 Attorney General, and Deane's Reports, it is Ordered by the Lords
 Commissioners in Parliament assembled, That the Commissioners
 of the said Office shall be, and is, *do* required to *do* satisfy next at
 Twelve o'clock, and that the Two Inquiries be taken formerly uncom-
 mitted this Case, shall be *do* brought, and that the Records be *do* returned,
 and brace with them all such Papers and Exams as are in the Office,
 relating to said Matter, and that Their Majesties Attorney-General
 shall *do* put their word on Their Majesties Behalf, and all others that be,
 are, will consently.

14 January, 1697.
Council being called in, and after some Time withdrawn, the Order following was made.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Officer, who hath the Custody of the Inquisitions taken after the Death of *William Earl of Barclay*, in the Counties of *Berks* and *Oxon*, do forthwith attend this House with the said Inquisitions.

The Attorney-General being appointed to attend this Day, and not being present when the Case of the Petition claiming the Title of *Earl of Devon* was to be argued at the Bar of this House, the following Order was made. It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *John Ashurst* be attended by His Majesty's Attorney-General, and for the same Cause may attend this House, as an Auditor, and that it be referred to the Lords Commissioners for Privileges, to *decide* the same, and that the Commission meet on *Thursday* next, at *Eight* of the Clock in the Afternoon.

After hearing this Day the Herald at Arms, as to the Petition of the Person that claims the Title of Earl of Ramsey, as also the Attorney-General on Their Majesties Behalf, against the said Claim, and Counsel for the Petitor claiming, It was resolved, upon the Question, That the Debate thereupon shall be adjourned until *Friday Morning* next, the said Bute.

17 January, 1697.
Then the Order of the fourth Infant being read for reforming the
affair of Delant, concerning the Petitioner who claims the Title of Earl
of Sainsbury, and the Inquisition formal, taken upon the Death of His
Honour Earl of Sainsbury being also read, and after Debate upon the said
Claim.

This Question was put, Whether all the Judges shall be heard in this Case?
It was resolved in the Negative.

Then the Question was responded,
Whether the Petitioner hath any Right to the Title of Earl of Sandby?
Upon which the persons, Question was put, whether the Question
sh^d be now put?

VOLUME VIII.

It was resolv'd in the Affirmative.
Then the main Question was put,
Whether the Petitioner hath any Right to the Title of Earl of Baulmy?
It was resolv'd in the Negative.

Dissolved in:

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Petition presented to this House the 13th of December last, by a Person claiming the Title of Earl of Besbury, shall be, and a Writ be issued to the Exchequer, to enquire whether the said Person be entitled to the said Title.

The ARGUMENT of the Lord-Chief Justice Holt, and Judge Powell, in the seconded Point of PEERAGE: In a Copy of the Speech, and of a second Charles Knowles, Attorney-General of Barbary.

HE was indicted at the Old Bailey of Murder, and removed thence by Counsel into the King's Bench, and there pleaded in Abatement of the Indictment, that he being indicted by the Name of

[illegible]

The KING and QUEEN arrived November

[illegible]

1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

the Plea which he is to plead, had been bad, it is said to conclude; for in this case, as his Letters Patent of Privilege in his Ancestors, under whom he claims his Honour with a *peer's* Coat, he hath sufficiently entitled himself to his Privilege by his Patent of Record, he being a complete Noblemen by his Creation, by his Letters Patent, without any other Ceremony, as appears by *Peja's* and *Reddell's* Case, Nov. 1560. 46. G. 2. on the 12. Rep. 71. And if he be to be arraigned after such Creation, and before the Parliament sits, he shall be tried by his Peers. And when I come farther to be pleaded and shown to the Court under the Great Seal, the other is to be considered, they not glad *Nul tunc Record*, *Et non* in the 4th Report, and need not conclude with a *supra per* *Record*, but he may have a Day to bring in the Record which he hath already taken into Court, to be the Defect of *Edward's* to the Honour, his days without issue, whereby it came to *Nobility*; and his Death, and the Defect to the Defendant pleaded, after the Letters Patent to his Peers, are all Matters of Fact, triable by the Country, and not by the Record, by Reason that if he could not conclude by *Placit*, there being no *Verdictum in Law* to warrant the Court of the King's Council, he must then at least have out of Chancery under the Great Seal, even though it shall declare the Defendant hath pleaded to make out his Patent. His Books tried by them no ways warrant that Opinion; for the *Historia* by *Hes. VI. 46. No. 3. 1785. and 347. Rep. 287. 294. 46. G. 2. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.* And if he be to be arraigned after such Creation, and before the Parliament sits, he shall be tried by his Peers. And when I come farther to be pleaded and shown to the Court under the Great Seal, the other is to be considered, they not glad *Nul tunc Record*, *Et non* in the 4th Report, and need not conclude with a *supra per* *Record*, but he may have a Day to bring in the Record which he hath already taken into Court, to be the Defect of *Edward's* to the Honour, his days without issue, whereby it came to *Nobility*; and his Death, and the Defect to the Defendant pleaded, after the Letters Patent to his Peers, are all Matters of Fact, triable by the Country, and not by the Record, by Reason that if he could not conclude by *Placit*, there being no *Verdictum in Law* to warrant the Court of the King's Council, he must then at least have out of Chancery under the Great Seal, even though it shall declare the Defendant hath pleaded to make out his Patent. His Books tried by them no ways warrant that Opinion; for the *Historia* by *Hes. VI. 46. No. 3. 1785. and 347. Rep. 287. 294. 46. G. 2. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

death not. Nobility is fixed to the Identity of the Person, and Inherent in the blood Nobilitated by the King, and cannot be granted over or taken by him who hath it, as it is said in *Joan's* Rep. 110. and the 4th 11. 136. and retained in Parliament in his Lord *Peja's* Case, *Shew's* Case in Parliament, *Page. 1.* And if it be as Honour or Inheritance, the Heat of the Peer on whom it descends cannot wave it, or the Privilege of it as to be used by his Peers, and as to be in the Lord *Debonair's* Case on 11. Rep. and 3. 11. 30. And as a Peer cannot thrust himself out of his own Honour, or the Privilege of it, by his Peers, as by his Lord of this Kingdom, as I know, he takes them him, but by Act of Parliament, Annals of his Peers, or by the *Servant*, to repeal his Patent, if the Creation is by Letters Patent; for where the Creation is by Letters Patent, they being sworn under Seal, the King cannot so terminate them, as is held in the Lord *Debonair's* Case, 12. Rep. 37. though where he is ordered to be ennobled by Writ, the King may supersede the Writ after it is sealed, and before the Parliament; but Letters Patent under the Great Seal is a Continuance in the Common Law, and the Patentee hath an Interest held in him in Things thereby granted, which is to be directed and governed by the Rules of Law; and therefore a Peer, if he be created by Letters Patent, his Estate of Inheritance in those Patents must be treated by our Writs, or else the Grant will be void, because it is sealed in him, and by a Continuance at the Common Law, as it is held 1. 11. 16.

And, by such a Creation, an Honour may be awarded within the Statute *Writ. 2.* and the Defendant if it is to be proved according to the Rules of the Common Law, and it is referred to as a Jurisdiction, as *Joan's* Rep. 110. and the 4th 11. 136. and retained in Parliament in his Lord *Peja's* Case, *Shew's* Case in Parliament, *Page. 1.* And if it be as Honour or Inheritance, the Heat of the Peer on whom it descends cannot wave it, or the Privilege of it as to be used by his Peers, and as to be in the Lord *Debonair's* Case on 11. Rep. and 3. 11. 30. And as a Peer cannot thrust himself out of his own Honour, or the Privilege of it, by his Peers, as by his Lord of this Kingdom, as I know, he takes them him, but by Act of Parliament, Annals of his Peers, or by the *Servant*, to repeal his Patent, if the Creation is by Letters Patent; for where the Creation is by Letters Patent, they being sworn under Seal, the King cannot so terminate them, as is held in the Lord *Debonair's* Case, 12. Rep. 37. though where he is ordered to be ennobled by Writ, the King may supersede the Writ after it is sealed, and before the Parliament; but Letters Patent under the Great Seal is a Continuance in the Common Law, and the Patentee hath an Interest held in him in Things thereby granted, which is to be directed and governed by the Rules of Law; and therefore a Peer, if he be created by Letters Patent, his Estate of Inheritance in those Patents must be treated by our Writs, or else the Grant will be void, because it is sealed in him, and by a Continuance at the Common Law, as it is held 1. 11. 16.

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And, by such a Creation, an Honour may be awarded within the Statute *Writ. 2.* and the Defendant if it is to be proved according to the Rules of the Common Law, and it is referred to as a Jurisdiction, as *Joan's* Rep. 110. and the 4th 11. 136. and retained in Parliament in his Lord *Peja's* Case, *Shew's* Case in Parliament, *Page. 1.* And if it be as Honour or Inheritance, the Heat of the Peer on whom it descends cannot wave it, or the Privilege of it as to be used by his Peers, and as to be in the Lord *Debonair's* Case on 11. Rep. and 3. 11. 30. And as a Peer cannot thrust himself out of his own Honour, or the Privilege of it, by his Peers, as by his Lord of this Kingdom, as I know, he takes them him, but by Act of Parliament, Annals of his Peers, or by the *Servant*, to repeal his Patent, if the Creation is by Letters Patent; for where the Creation is by Letters Patent, they being sworn under Seal, the King cannot so terminate them, as is held in the Lord *Debonair's* Case, 12. Rep. 37. though where he is ordered to be ennobled by Writ, the King may supersede the Writ after it is sealed, and before the Parliament; but Letters Patent under the Great Seal is a Continuance in the Common Law, and the Patentee hath an Interest held in him in Things thereby granted, which is to be directed and governed by the Rules of Law; and therefore a Peer, if he be created by Letters Patent, his Estate of Inheritance in those Patents must be treated by our Writs, or else the Grant will be void, because it is sealed in him, and by a Continuance at the Common Law, as it is held 1. 11. 16.

* See this Case in a Book, entitled, *Proceedings, Proceedings, and Arguments in Cases and Controversies about Barons by Writ, and other Honours.* Fol. Printed 1734.

him, and the Matter determined in a Court of Law, on solemn Hearing at the Bar of the House on both Sides, on Depositions taken in the Cause, against invidious Courts, they voted him an Impediment, which is very far from being a Precedent of their Lordships Original determining Right of Passage, which are all the Precedents which have been cited, and unto which I trust that I have given full Answer, and therefore this Order, here pleaded, being without a Precedent, I am of Opinion, for the Reasons I have given, that the Lords ought to be shewn.

Also, the Chief-Justice, held the Plea good, the Defendant having pleaded the Creation of the Lords his Ancestors, and a plain Denial under them: And for the Earlson, that Rebuttal was agreed to be in Foreign, he fails it was needless, the Creation being under the Great Seal, the Great Seal of England being only peculiar to England, for thereby the King acts as King, and had the Grants been made to or the Conquest of Ireland, without Doubt it had been a good Grant, and the Conquest of Ireland cannot alter the Law of England; besides, it would be a foreign Constitution, to insert *Barbony in Ireland*, and a Plea that will not be made but by such a Contrivance.

And that the said Arch-graue Banerius in *France*, under the Great Seal of *England*, is by to constitute Privileges, and therefore, that he might be Special Warden in the Patent, so drew that in an Irish Letter, and Banerius, as well as Act of Parliament, extend not to *France*, until the specially named, but by *England*, they be without any such in *France*. And he said, That before Edward the Third's Letter, there were but Two Titles of Honour, Duke and Baron, and the latter is created by Writ, by being called to the Parliament; so was also Sir by the Treasurer, and after, in Richard the Second's Time, they came to be created, by Letters Patent, and it was annually in Office of great Dignity, as also of Trust, for the Defence of the Kingdom; and these were called *Comites a Sancto regni*, or *Reges*, and being an Order, might be intailed under the Statute of *Durham*, and they had formerly large Possessions, and for the Rob of an Earl, was 1200*l*. becoming

[illegible]

* This James Ferry was a Trunk-sticker in the *Journal*, and published his *Color and Pedigree* in about 1848 as Pages in Volume One of his Arguments in making you believe he was a true Descendant of the Purveys, says, "that he has been with a *Blade* in it, the only other of the Purveys had been left a *Self-Blade*." Vide our *Q's*, P. 15 — 17. a Chicken under the Crust of the *Orange*. Earth of *Arctostaphylos*.

would be with him every Morning and Evening to read the *Prayers* of the Church, and perform such other Offices as in such Case as his had belong to that Function, which, except one Day in the Week, was duly observed, and sometimes other, for when any Clergy came accidentally to visit him, if they did neglect to offer, he constantly requested them to pray with him. He gave little or no Entertainment to any Hopes of Life, as being sensible that it was rather Malice, than Mercy against him; and that a Curse may be pardoned, but Malice is not to be limited without the Destruction of its Enemy, if he once comes in its Power. He often expressed a great Satisfaction in the Cause for which he suffered, saying, *That it signified to him such Comfort and Courage, and that he believed not but that God would support him in the Cause he had undertaken.* As to the Ordinary (*Mr. South*), he indeed, in Point of Conscience, refused to communicate with him, yet mildly and modestly telling him, that he was desirous to give him no Trouble, and requested of him, that he would use any way to concern himself with him, or about him, at which *Mr. South* fell into such an unbecomingly impetuous Fit of Rage, that he reviled the Prisoner with bitter Words, and very generously damned both him, and all the Ministers that came at him, to sell: But he took it patiently, and returned not the least Word that might seem to offend harshly. As his Wife once laid her Hands on his Fetters, and wept, he intreated her to forbear, saying, *He was left then a Man that could not bear that; but that her Tears were more precious to him than his Fetters:* Another Time, as he was hanging a Link on the Chair, thereby to raise himself somewhat from the Weight of his Fetters, and perceiving his Wife to look very heavily at it, he said cheerfully to her, *My Dear, these are my Arms, alluding to the Arms of their Family, being Sable, two single Black Armes, and one double, Argent.*

When *Tucker* sold him that the *Dead Warrent* was come, and that he was to die, he gave him Thanks for giving him Notice of it, that he might be sure that had none touching else to do, but to prepare to die; saying further, *The Lord's Will be done.* He received the Holy Sacrament twice during his Imprisonment, but whether it be customary, or that they had particular Order, the Keepers all (except *Walker*, who was ill along not only civil, but even compassionate towards the Prisoner), the Evening and Morning before he suffered, became exceeding rugged and harsh, not only to him, but to all that came to him; insomuch that his Mother and Brother coming that Morning to receive the Communion with him, could neither beg, nor buy Admission; and the poor old Woman was forced to depart, without joining in the last Act of Christian Communion with him, or so much as taking her intended last Farewell of him.

Other very unbecoming Actions towards him I must mention, which I shall forbear, being unwilling to set forth that Barbarity which some delight to see. When he was brought down to go to the Place of Execution, he entered into the Sledge, and rode along in it with such calm Behaviour, and decent Courage, as Bruck the Beholders with Remorse and Amazement, and made his Enemies gnash their Teeth with Indignation, to see him triumph over his Malice even in his Death. In his Passage all the Way, the People rather formed themselves, than inclinable to offer any Abuse, except near St. Giles's Church, where a rude Fellow treated him with very impudent Language, to which he made no Return, but lifting up his Eyes to Heaven, said, *O Lord! Take these words more highly than I say for me, and for Mankind! And bid not I turn of this patiently to hear the unbecoming Reproaches of this insolent Man?*

As he was coming up to the Place of Execution, a Clergyman got up into the Cart to be ready to receive him; as which the Ordinary seemed to be much incensed; for he gave him very ill Words, bidding him get down, and saying, He ought not to be there, nor should he be suffered; the Minister replied little, but stay'd still, till (for now one ill Nature helps another) Major *Richardson* came up, and with Threatenings, and his Canes lifted up, forced him to come down, who immediately thereupon applied himself to the Sheriff, (for by this Time they were come up) when some ill Person suggested, that he was a Papist, to which the Prisoner presently answered, *Mr. Sheriff, upon the Word of a dying Man he is not, but a Minister of the Church of England.*

The Ordinary made all the Opposition he could; but the Sheriff granted the Prisoner's Request, bidding the Ordinary hold his Peace, and saying it was a Thing never denied to a dying Man. Being in the Cart, and all the Prisoner's Brother, he used an Office which seemed to be collected out of several Offices in the Common-Prayer Book, with such firm Assertions as might serve to adapt them to the present Occasion; being first asked the Reason, he said that he did it both for the Authority of the Thing, and also to avoid any Casuists that might be made at, or any Senates that might be held for, any of his own Conceptions. But when he came to mention the Creed, he put these particular Questions to the Prisoner: *Do you believe these Articles which you are now about to receive with you, as you have said that you do? Do you believe that the Church of Christ, and particularly by the Church of England? And is this the Faith which you do, and wherein you hope for Salvation?* The Prisoner making Answer, *I do so believe, and am now ready to die in that Faith, and in that Faith hope for Salvation.* Then said the Minister, *Now, say after me:* Then they repeated the Creed, raising their Voices somewhat higher than ordinary; after that, the Minister asked him several Questions concerning his Repentance, his Charity, his Endeavours of Religion for any Wrongs by him done, his forgiving of others any Wrongs done to him, and the like. And then, at the earnest Request of the dying Man, he denounced the Absolution, then proceeding to divers other Prayers, they concluded with that Sentence in the Office for the Burial of the Dead: *O holy and merciful Saviour, thou must surely Tuckey attend, forgive me not as my last Hour for any Point of Doubt is full from thee.* This being over, the Minister (whether that he could not endure to see the Man die, or that he would not communicate with the Ordinary, or for some other Reason best known to himself), after he had generously embraced Mr. Anderton, fervently recommended his Soul to God, and taking

his last Farewell of him, went down out of the Cart. The Sheriff civilly commanded a Way to be made, and were ready, albeit, he passing thro' the Crowd, not only with Ease, but Respect. During the Time the Prisoner was at his private Devotions, an Order came to permit the Quartering of his Body, which being by some thought a Reprieve, it was handed to him, and having read it, and finding it no more, he returned it, saying, *I thank you, Mr. Sheriff, the Will of the Lord be done.* Having Leave from the Sheriff to speak his Mind, if he had any Thing to say to the People, he began to speak; but being too suddenly interrupted by the Ordinary, and also finding he could say but little, he delivered a Speech he had prepared might be taken out of his Pocket, and given to the Sheriff, to be by them printed, which is as followeth.

To my Countrymen,

Liberty and Property hath for some Years made an hideous Cry in these Kingdoms, and nothing more than the Rights and Privileges of the Subject's in the Presence of our present Deliverers, and doubtless it was for the sake of these that so many of our intemperate and blind Countrymen rebelled against their lawful and injured Masters, whilst Religion (*Richardson's* Embrace) was made the Cover of the Violence. Designs of those who have now demonstratively shewn, that they sought nothing less than our Ruin. And that their wretchedly Pretence to gain their Ends, the very blind, although they cannot see, yet must certainly feel it. Under the like Pretences do our Deliverers still continue to deliver us even from what they please, that they think will but in the end help to effect what they came for. Under the Notion of the Necessity of a War, they deliver us from our Money, and from our Traffick and Commerce, by carrying it great a Part of the Kingdom is furnished: The Flower of our Kingdom, and directly contrary to Law, transport them; and to face their own Foreigners, put them in the first Order of these Battles, as the Headers did the Christians of old, that their Enemies' Swords might be blunted with killing them, before they came to encounter them: They exhaust all our Stores both for Sea and Land, and carry away all our Artillery, and if any Man seem but to disapprove of their Proceedings, under the Notion of Law they murder him: Nay, if they do but so much as suppose him not to be on their Side, he must be a Traitor, and no Master what the Law says, they say by Bill do.

Can any Thing be more plain to demonstrate this, than my present Case? My supposed Crime was Printing, and all the Witnesses could perfectly lay against me, was, That I was a Man against the Government, and had sought the Prince of Orange Hook-nail, though I protest I never did: not one of them could say, nor did they stir to say, that I ever printed the Books of which they accuse me, or procured them to be printed, or published any of them, or that the Materials were mine, or that I hired the Room where they were found; but I was an ill Man, and that was sufficient: By which 'tis plain, that they were resolved, right or wrong, to have my Life.

That they designed not to try, but to convict me, is as plain; for they refused positively to allow me Counsel to such Masters of Law, as was never refused to any before; and though I caused several Copies to be read, some to prove that there must be two Witnesses at least to the Fact, others, that though there had been two, as there was not one, yet positively declared that it was no Treason: Nay, the very last Session of Parliament was attended, That the Printer of seditious and treasonable Books should for the first Offence be punished no otherwise than not to follow his Trade for three Years; and for the second Offence, never to follow it more, and such farther Punishment as seemed fit to the Court, not extending to Life or Limb. Now though mine [had been proved] had but been the first, yet you see, contrary, and in direct Opposition to the Law, they make it High-Treason: And when the Jury could not agree to find me guilty, and came down to ask the Court, Whether the finding these Things there, and supposing them to be mine, since it could not be proved that I printed these Books, or had made any Use of them, could offend my Life? I say, when the Jury asked this Question, and the Lord-Chief-Justice *Pryor* told them positively, No, it did not; yet withal he told them, That that now my said *Subpoena*, they *Subpoena* was to find me guilty of Printing: And while they lay'd, the Court frowned upon them to that Degree, that the Foreman told them, he was not to be frightened; upon which they publicly served them, calling them, *ill Men, ill Subjects, and a Pair of Knaves*, and so terrified them into a Compliance. That thus true, those who were near know too well, although the partial Writer of the Trials hath most maliciously published not only an unfair, impertinent, and lame Account, but hath also abused it with downright Untruths, and falsehoods, to set out, whereof made for me; not so much as mentioning the Contradictions of the Witnesses, and when I took hold of them, they denied them; nor hath he, in the last, told the World of the Judge's secret-sailing whatsoever I uttered, without giving any other Answer than that it should be so, though they could have it so; with many other such Things, which the conscientious Auditor can testify to.

And now I pray consider where is this Liberty and Property? Where the Rights and Privileges of the Subject? Nay, where the very Laws themselves? And consequently where is the Security of my Man I Why, even in the Deliverers Pockets, where your Money is; and where also, without all Doubt, if you look not well to yourself, your Estate, or long, will be likewise. What are the Pretences but arbitrary in a superlative Manner; and such as no Reign ever produced before? These were they you were heretofore only afraid of, being jealous without just Cause; but now you see them actually come upon you. I hope you yearnless will put a

Stop

* This Trial here spoken of, is the foregoing one, printed in the Successor-Press of that Time.

That a King may commence a War since he is dispossessed of his Kingdom, and be reputed a Lawful Enemy by the Law of Nations, and consequently all those of his Subjects that continue still with him, without considering their Allegiance to the Possessor, be reputed and treated as Enemies; for it would be absurd to say, That the King may continue in War, where the Subjects cannot.

That King James having no *Armour*, or *Treasury*, (in case he be) as has been alleged against the Validity of his Commission, is no more Sene, than it would be to say, That no Prince by the Law of Nations can commence War, but at his own Charge.

That the War between King William and King James continued on, after King James and his Forces left Ireland, and that the Articles upon the Surrender of Limerick, admit it to do, if the permitting so many Thousand Men with Arms, Horses, Guns, and Ammunition to go into France to King James, in Arms as Soldiers, commissioned by him, may be any Proof of such Admission.

That the said Article being signed by Louis XIV. General Giscard, Limerick, and other Places having been surrendered upon the Faith of these Articles, all concerned in them, ought by the Law of Nations to have the full Benefit of them; and that, although they had never afterwards been confirmed.

That King James is still actually in War, and in Confederacy with the King of France, that many Thousand English, Scotch and Irish still aid under Commission from King James, in conjunction with the French Forces: That they have hitherto been discharged and exchanged by the Confederates, (as Prisoners of War) though often fighting against the English that aid under King William's Commission; and if so, Why are King James's Commissions null, and nullities for Sea?

That King James and the King of France being confederated together in War against England, it matters not in the Judgment of the Law of Nations, under which of the Confederates Commission the Subjects of either aid, whether under King James or the King of France's; but the Enemy without Distinction, if either Subject aid under either Commission, ought by the Law of Nations to treat them as Enemies and Prisoners of War.

That where two Kings join in War against one another, after one of them has lost Part of his Dominions, (as King James had, when the King of France lent him Forces into Ireland) and soon after he became wholly dispossessed, would it not be absurd, for any one to say upon this Case, That it was absurd by the Law of Nations for the one King to assist or join with the other, after that he had lost Part of his Dominions? or if he does, that yet notwithstanding the War is wholly at an End as to the latter, and he becomes a private Person, though never for many of his Subjects follow him in Warlike Manner by Captivation from the Enemy, or that these Subjects are disabled by the Law of Nations, to accept any Commission from him, (see his Confederate King by his Consent) or serve him any more as their King: Or, if they do, that they will not execute them from being Pirates and Traitors to the Dispossessed.

That the Law of Nations, to the Judgment of which our Case only belongs, is the Great and Imperial Law of Right and Equity that judges of the Rights of Kings and Nations, with respect to each other, and of the Rights of War, and of the Rights of Peace, and all Nations with respect to this Law are considered as one great Corporation, and each Kingdom or Nation but as a single Member or Part of this Corporation. And therefore this Law, or any Rule of Rights, or Nation of it, cannot be altered, con-

cluded or eluded by any Votes, Ordinances or Statutes, or any particular Nation or Kingdom.

That every Lawful Established King, in the Nation of this Law, has a Right to hold his Kingdom, during his Life, and that in case it be any such King's Misfortune to be dispossessed through any War or Invasion, That he has the *Right* by *Regal Recaptivation*, and a Right to the Assistance of any other Prince, who shall think fit to join with him for the Recovery of his Kingdom, as being as much his Legal Remedy, as for any private Person for the diffusing his Freehold by the particular Laws of any particular Kingdom.

That this also a Nation and Rule of this Law, That no Lawful King can lose the Name and Title of King, unless he resigns or abdicates his Kingdom; and that every Abdication or Resignation ought to be the Voluntary and Involuntary Act of such King to do, or else that it is no Abdication or Resignation. That every such Abdication or Resignation by this Law may appear otherwise in the Judgment of this Law, than only by a Vote or Statute, made only by the Prince and Persons in Possession of the Kingdom of such dispossessed Abdicating King; or otherwise these Judges cannot, by the Law of Nations, admit it to be any Case, wherein the Want of Issues of the same Case turns upon such Abdication: Especially, if such King continued to act as a King, and to grant Commissions as such, &c. For if once such a Vote or Statute should be admitted as Evidence in our Law, (would these Judges say) no Prince came out of Possession, however he came to be, could retain any Right in his Kingdom; or the very Name of a Prince, unless his Enemy would please to let him? For it would be no more than for the Enemy to vote that the Prince has Resigned or Abdicated, and there would be an End of the Prince and his Right, as to be (say so prevailing) Enemy would omit to do, if such, as any such Vote, or Law made among themselves, would by the Law of Nations utterly conclude, and unking the dispossessed Prince, and dissolve all Relations between him and his Subjects, as consequently it must do; and that therefore, however the Party making such Vote, and receiving Provision from the Prince in Possession, may be eluded and bound by it by their own Acts and Consents, yet in the Eye of the Law of Nations, (which alters not) he continues in all the Circumstances and Rights of a dispossessed Prince, until he shall appear to have Redigged or Abdicated, according to the Law of Nations.

Lastly, We most humbly beseech, and appeal to your Lordships Considerations, whether the Articles of Limerick, which were produced at our Trial, and are ready to produce to your Lordships, and the very reported Power (in case he had no other) King James has hitherto had, and used, of granting Commissions, and all that have hitherto acted under his Commission having been cited and treated as Soldiers and Strangers aiding under real and valid Commissions, be not sufficient to execute as (who have never been within this Kingdom since the Beginning of the War, till we were brought Prisoners from the Condemnation of France) And whether aiding under the King of France's Commission, being in Arms and League with King James, and by his Consent, can be in so Treason against King William, who never, in any Respect, received his Protection, but adhered all along to King James, as to our King, and fought against King William, as King James's Enemy.

These Considerations are humbly submitted to your Lordships, being, as we conceive, of the greatest Consequence to all the Subjects of England, as the Case may sometimes happen.

However, some of them, if not all, were executed.

XLIX. RESOLUTIONS of the House of Lords on several Books, &c. 1701 and 1702.

13 W. & 1 A.

The Vote or Resolution and Orders made by the Lords Spiritual and Temporal in Parliament Assembled, relating to William Fuller, and the Books published by him (a).

Die Lunæ 29 Januarii, 1701.

WHEREAS by Order of the House of Peers, of the Twelfth Instance, William Fuller was Ordered peremptorily to produce before their Lordships this Day Mr. Thomas Jones, and Mr. Fuller attending at the Door, was called in, and asked several Questions relating thereto, and the said Fuller not producing the said Thomas Jones, nor making any satisfactory Excuse to the House for his not producing of him. The House came to the following Resolution, &c.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That in the Books published by William Fuller, one entitled, *Original Letters of the late King's*, and others, in his greatest Friends in England, the others entitled, *Twenty-five Discourses of Justice of Quality and Worth*, are contained divers false, malicious, and scandalous Matters, reflecting upon several Members of both Houses of Parliament, which are of dangerous Consequence to the Government.

And therefore the following Orders were made:

It is ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Directions of this House given to the Warden of the

(a) *The same is* 29 January, 1701. It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Vote or Resolution and Orders made this Day relating to William Fuller, and the Books published by him, shall be forthwith Printed and Published.

(b) *1701.* William Fuller, that branded and infamous Impostor, being in an Order of the House of Lords, at the 28th of January, produced for Proof that in a false and malicious Libel, the late original Letters of the late King James, and others, in his greatest Friends in England; the others entitled, *Twenty-five Discourses of Justice of Quality and Worth*, are contained divers false, malicious, and scandalous Matters, reflecting upon several Members of both Houses of Parliament, which are of dangerous Consequence to the Government.

(c) *Die Lunæ 29 Jan. 1701.* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Proceedings of this House, in Relation to the Matter, be Printed and Published.

Matt. Jephson, Clerk Parliamentar.

Flour, the Eighth Instant, that he should not confine William Fuller further than he used to be, be fit aside and vacated; and that William Fuller shall be, and he is hereby, committed Prisoner to the Prison of the Fleet.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That His Majesty's Attorney-General do forthwith prosecute William Fuller, according to Law, for writing and publishing the said false, malicious, and scandalous Matters; and that his Majesty's said Attorney-General do also forthwith prosecute Mr. Peter Bell and Mrs. ——— Bellows, who Printed and Published William Fuller's said Books (d).

Matt. Jephson, Clerk Parliamentar.

The Proceedings and Resolution of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Saturday the Ninth of May, 1702, upon Part of the Preface to the Book, intitled, *The History of the 12th Parliament*, begun at Westminster the Tenth Day of February, in the Twelfth Year of the Reign of King William, Anno Domini 1700 (e).

Die Lunæ 4 Maii, 1702.

Complaint being made to the House, of a Passage in the Preface of a Printed Book, intitled, *The History of the 12th Parliament*, begun at Westminster the Tenth Day of February, in the Twelfth Year of the Reign of King William, Anno Domini 1700.

That the Passage was made to the House, and is as follows, viz.

Matt. Jephson, Clerk Parliamentar.

(d) *The same is* 29 January, 1701. It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Vote or Resolution and Orders made this Day relating to William Fuller, and the Books published by him, shall be forthwith Printed and Published.

(e) *Die Lunæ 4 Maii, 1702.* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Proceedings of this House, in Relation to the Matter, be Printed and Published.

Matt.

* And perhaps, there are some that Thing in Prospect of deeper Reach than all these; which say, that should it have pleased God, for our Sins, to have search'd from us the King on the field, by Chance of War, or other fatal Accident, during the Tumult of Arms abroad, and the Civil Disorders they had rais'd among us at Home, and a numerous, corrupt, licentious Party throughout the Nation, from which the *House of Commons* was sometimes not free, they might entertain Hopes from the Advantage of being at the Helm, and the Assistance of their Rabbie, to have put in Practice their own Schemes, and have given us a new Model of Government of their own Projection, and so to have procur'd to themselves a lasting Impunity, and to have mounted their own Beast, the Rabbie, and driven the false Part of the Nation like Cattle before 'em.

* That this is no groundless Conjecture, will readily appear to any considering Persons, from the Treatment Her Royal Highness the Princess of Denmark, the House Apparent to the Crown, met with all along from them and all their Party. They were not contented to show her a constant Neglect and Slight themselves, but their whole Party were studious to treat her not only with Disrespect, but Spight; they were busy to traduce her with wicked and baseless Aspersions; and so far they carried the Affront, as to make her at one Time almost the common Subject of all Title-Tattle of almost every Coffee-House and Drawing-Room, which they promiscuously as much Zool, Application, and Vexation, as if of a Bill of Exclusion had been born on the Anvil, and thence were the introductory Ceremony.

It was thereupon Order'd by the Lords Spiritual and Temporal in Parliament Assembled, That *Francis Gage, Robert Gifford, and Thomas Hedges*, for whom the said Book is licens'd to be printed, shall, and they are hereby required to attend this House, on *Saturday* next at Eleven of the Clock.

Die Mercurii, 6 Martii, 1702.

The House being inform'd, That *Doctor Drake* own'd himself to be the Author of a Book, intitled, *The History of the last Parliament*, for passing whereof some Bookellers are Order'd to attend on *Saturday* next; and that he desired he might be appointed to attend at the same Time: Thereupon it is Order'd by the Lords Spiritual and Temporal in Parliament Assembled, That *Doctor Drake* do attend this House, on *Saturday* next at Eleven of the Clock.

Die Sabbati, 9 Martii, 1702.

After reading the Order made the first Instant, at the Desire of *Doctor Drake* for his Attendance this Day, the House took into their Consideration the three-mentioned Paragraphs. After the Reading whereof, *Doctor Drake* was call'd up, and the Order of the Sixth Instant read to him.

The Lord Keeper ask'd him what he had to say concerning the said Book; And the Book and the said Paragraph being shew'd him, he own'd he was the Author, and that Paragraph in particular; and he thought he had full Reason so to write it, he having heard her Highness talk'd of disrespectfully in almost every Coffee-House.

Then he withdrew.

And, after some Debate, was call'd in again, and the Lord Keeper told him, the House was not contented with what he had said, but thought he should, and required him to acquaint the House with the Grounds of his writing that Paragraph.

He answer'd, he found it mentioned in divers anonymous Pamphlets publish'd at that Time, and hoped it was no Hurt to answer their Pamphlets, and desired Time to recollect what those Pamphlets were, and then withdrew.

After some Time he was call'd in again, and asked the following Questions, viz.

If he could charge any Persons or Persons in the Kingdom, with the Matters affect'd by him in that Paragraph?

To which he Answer'd, That he did not know any such Person.

Then he was ask'd, Whether he had heard any other Persons say, That they could charge any Person whatsoever with the Matters contain'd in that Paragraph?

He said, he did not know of any such Person.

Being further ask'd, If he had any other Grounds besides the Pamphlets, and what those Pamphlets were?

He said, He had no other Grounds besides the Pamphlets; and named the several Pamphlets following, as the Ground of writing that Paragraph, viz.

The Two Legion Letters; The Black List; The True Popish Anglican; and *Salvator's* Reasons for invading upon the Privilege of *House*.

And being ask'd, If in any one of these Pamphlets there was any thing false about setting aside the present Queen?

He answer'd, he did not remember there was.

Then, he being withdrawn, the said Paragraph was taken into Consideration, and it was propos'd to pass a Censure thereupon.

And after Debate,

This Question was put, That a Censure shall be now put upon the said Paragraph.

It was Resolv'd in the Affirmative.

Then this Question was put, That in the Preface of the Book, intitled, *The History of the last Parliament*, begun at Westminster the Tenth Day of February, is the Twelfth Year of the Reign of King William, Anno Domini 1700, there are several Expressions, which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It was Resolv'd in the Affirmative.

It is Resolv'd and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That as the Preface of a Book, intitled, *The History of the last Parliament*, begun at Westminster the Tenth Day of February, is the Twelfth Year of the Reign of King William, Anno Domini 1700, there are several Expressions, which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It was Resolv'd in the Affirmative.

It is Resolv'd and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That as the Preface of a Book, intitled, *The History of the last Parliament*, begun at Westminster the Tenth Day of February, is the Twelfth Year of the Reign of King William, Anno Domini 1700, there are several Expressions, which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It was Resolv'd in the Affirmative.

It is Resolv'd and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That the Proceedings and Rejection of this House, in Relation to this Matter, be forthwith Printed and Published.

It is Order'd by the Lords Spiritual and Temporal in Parliament Assembled, That the Rejection and Proceedings above-mentioned, shall be forthwith Printed and Published.

It is Order'd by the Lords Spiritual and Temporal in Parliament Assembled, That Her Majesty's Attorney-General do forthwith officiously prosecute the said *Doctor Drake* for having writ the said Paragraph.

The Proceedings and Rejection of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Tuesday the Twelfth of May, 1702, upon the Paragraphs contain'd in *Page 89* and *90*, of the *Book*, intitled, *Tom Double returns'd out of the Country*: Or, *The True Picture of a Modern Whig*, set forth in a Second Dialogue between *Mr. Whigmore* and *Mr. Double*, at the Rammer Tavern in Queen-street.

Die Mercurii, 12 Martii, 1702.

THE Order being Read for the Master and Wardens of the Stationers Company, and *John Noss*, to attend, to give an Account of what they have done in Order to find out the Author and Printers of the Book, intitled, *Tom Double returns'd out of the Country*: Or, *The True Picture of a Modern Whig*, set forth in a Second Dialogue between *Mr. Whigmore* and *Mr. Double*, at the Rammer Tavern in Queen-street. They were call'd up, and Mr. Noss said, That Mr. Barber, the Printer, gave him the Book to Publish, and they withdrew.

Then the House went into Consideration of the Paragraphs in the 89th and 90th Pages of the said Book, which were read, as followeth, viz.

* *Whigmore*. I find we have miscarried in one great Design, the Train would not take, we were very far upon it just before the Parliament met, all the Whig Coffee-Houses rung how necessary 'twas to break into the Acts of Settlement, and to exclude—

* *Double*. Marm, *Whigmore*, talk no more upon the Subject, I beseech you; fifth Orders are issued out, and sure we are not rising enough to make it go, and that on the contrary it has alarm'd and provok'd all sorts of Men, we are now brook'd to lay, That never any such Thing was intended by us Party, tho' I well know, it was the whole Delicacy of all our Clubs. Under the Reck, this was one of those Embellish'd that spread about in the year of *December last*; but tho' it is not feasible to bring it in it now, never fear our abandoning a wicked Design, we never quit by side any Mischief; however, since it has already open'd the Eyes of a great many, and weaken'd out *honest* among several of our own Side, when (with Grief of Mind I speak it) we cannot work up to be guilty of so much Injustice, let us take all Occasions of declaring, That we will not violate their Acts upon any Account whatsoever; which we may the more fully do, because you know 'tis our Principle, not to think that we are bound by any Restrictions we make, either in Private or in Public; and 'tis one of the great Advantages we have over the rest of our Fellow-Subjects, that we can fetter the Conferences of others, while our own are as perfect Liberty.

Then it was propos'd to pass the same Censure on these Passages, as was propos'd on Part of the Preface of *Dr. Drake's* Book.

After Debate, the Question was put, Whether the House shall be now adjourn'd?

It was resolv'd in the Negative.

Then this Question was propos'd,

That in the Paragraphs which have been read, contain'd in the 89th and 90th Pages of the Book, intitled, *Tom Double returns'd out of the Country*, &c. there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

Then this Question was put,

Whether the Words, *Groundless, False, and Scandalous*, shall be left out of the Question?

It was resolv'd in the Negative.

Then the main Question was put,

That in the Paragraphs which have been read, contain'd in the 89th and 90th Pages of the Book, intitled, *Tom Double returns'd out of the Country*, &c. there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It was Resolv'd in the Affirmative.

It is Resolv'd and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That in the Paragraphs which have been read, contain'd in the 89th and 90th Pages of the Book, intitled, *Tom Double returns'd out of the Country*, &c. there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

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ing very many Reflections on King Charles the First of ever-blessed Memory, and tending to the Subversion of the Monarchy.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Pamphlet, intitled, *Animadversions upon the two last Sermons of January Sermon: One preached before the Honourable House of Commons: The other in the Lower House of Convocation: In a Letter, shall be burnt by the Hands of the Common Hangman, in the Old Palace-Yard, Westminster, on Friday, the 22d Day of this Instant May, between the Hours of One and Two of the Clock in the Afternoon of the said Day.*

To the Sheriffs of London and Middlesex, and every of them.

Die Sabbati, 16 Maii, 1702. (s).

THEN the House took into Consideration a Book, intitled, *A Sermon preached on January the 30th, 1702-2, in King Henry the Second's Chapel, before the Reverend Clergy of the Lower House of Convocation, by W. Binchey, D. D. a Prelate for the Diocese of Litchfield and Coventry (s). And some Fairs, or Panegyrics, out of the ninth, tenth, and thirteenth Pages of the said Book being read, as followeth, viz.*

* And last, As to the near Resemblance between the Parties concerned, as well the Actors as the Sufferers, comparing those in the Text with those of the Day.

* And here, one would imagine, the latter were referred to take St. Paul's Expression in the most literal Sense the Words will bear, and *cruelly to scourge the Lord a stripe, and so the next Likeness that could be, put him to an Open Shame. II. with Respect to the Dignity of the Person, to have been born King of the Jews, was what ought to have screened one from Violence, here is also one, not only born to a Crown, but actually possessed of it. He was not only called King by some, and at the same Time, derided by others for being so called, but he was acknowledged by all to be a King; he was not just deified up for an Hour or two in Purple Robes, and Laid with a Hair King; but the usual Ornaments of Majesty were his customary Apparel; his Subjects owned him to be their King, and yet they brought him before a Tribunal; they judged him they condemned him; and that they might not be wanting in any Thing to set him at naught, they put upon him, and treated him with the same Contempt. Our Saviour's declaring that his Kingdom was not of this World, might like look a Sort of Remuneration of his Temporal Sovereignty, for the present deferring only to reign in the Hearts of Men; but here was nothing of this in the Case before us; here was an indisputable, unrenounced Right of Sovereignty, both by the Laws of God and Man; he was the reigning Prince, and the Lord's Anointed; and yet, in despite of all Laws, both Human and Divine, he was by direct Force of Arms, and the most daring Methods of a flagrant Rebellion and Violence, deprived at once of his Imperial Crown and Life.*

* The Fact of this Day was such a yring with the first Arch-Rebel, the Apostate Angel, Lucifer; it was such a going beyond the Old Serpent in his own Way of Insultence and Pride, that it is no Wonder he then began to raise his Head, and set up for Dominion in this World, when thus warned and rebuked by a very Zeal in Rome, and Rage in others, to the Degree of Drunkenness, cursing afar, and cursing themselves in Royal Blood, and in which respect only, heated to the Degree of Frenzy and Madness, the Plea in my Text may seem to have some hold of them, *Forso, for give them, for they know not what they do.*

After Debate thereupon, it being proposed to censure these Panegyrics, the House came to the following Resolution:

It is Resolved and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That in the Book intitled, *A Sermon preached on*

January the 30th, 1702-2, in King Henry the Second's Chapel, before the Reverend Clergy of the Lower House of Convocation, by W. Binchey, D. D. a Prelate for the Diocese of Litchfield and Coventry, there are several Expressions that give just Scandal and Offence to all Christian People.

Then it being proposed to burn this Sermon, this Question was put, Whether the Sermon shall be burnt?

It was Resolved in the Negative.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution above recited shall be communicated to the Lord Bishop of Litchfield and Coventry.

The Resolutions and Proceedings of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Saturday, the 16th of May, 1702, upon Two Petitions in the Pamphlet, intitled, I. Reasons for Addressing his Majesty to invite into England their Highnesses, the Elector of Brandenburg and the Electoral Prince of Hannover. And likewise, II. Reasons for Attaining and Abjuring the pretended Prince of Wales, and all others pretending any Claim, Right, or Title from the late King James and Queen Mary, with Arguments for making a vigorous War against France (s).

Die Sabbati, 16 Maii, 1702.

Complaint being made to the House, of two Pamphlets in the Pamphlet, intitled, I. *Reasons for Addressing his Majesty to invite into England their Highnesses, the Elector of D. and the Electoral Prince of Hannover, and likewise, II. Reasons for Attaining and Abjuring the pretended Prince of Wales, and all others pretending any Claim, Right, or Title from the late King James and Queen Mary. With Arguments for making a vigorous War against France.* The Pamphlets were read to the House, and are as followeth, viz.

* It appears from History, that all free People have for a while the Children of Tyrois for Reasons of eternal and universal Force, as inheriting the Principles and Designs of their Parents, bearing an Affection to their Friends, and using a Revenge to their Enemies, as more likely to prevail at a greater Power than even their Parents, the better to secure themselves from those Designs, and being under extraordinary Obligations to those foreign Potentates who protected or relieved them.

XXXI. * In fact, whether the *Abjuration* be penal or voluntary, (for I cannot doubt of one or the other) I hope Can will be taken that it is intended, as I said before, in all Manner of Persons, not excepting the King's Majesty, or her Royal Highness the Princess of Denmark. For all the Secretaries we give to them, from which I am the fatherly of any Man in the World. But they both of them very well know what Issues and Schemes our Enemies have been actively spreading to smother and annihilate the People; they have whispered horrible Things of blind and circular Bargains; but CÉSAR's Wife ought to be unsuspected as well as innocent.

It is Resolved and Declared, by the Lords Spiritual and Temporal in Parliament Assembled, That there are in the Pamphlet, intitled, I. *Reasons for Addressing his Majesty to invite into England their Highnesses, the Elector of D. and the Electoral Prince of Hannover. And likewise, II. Reasons for Attaining and Abjuring the pretended Prince of Wales, and all others pretending any Claim, Right, or Title from the late King James and Queen Mary. With Arguments for making a vigorous War against France; Abjuration and Intimations, Reprobation and dangerous, tending to alienate the Affections of the Subjects of this Kingdom from her Majesty, and to disturb the Peace and Quiet of the Kingdom.*

L. The Evidence given at the Bar of the House of Commons, upon the Complaint of Sir JOHN PAXINGTON, against WILLIAM Lord Bishop of Worcester, and Mr. LLOYD, his Son. Together with the Proceedings of the House of Commons thereupon. 1702. 2 A. (d)

Luna 2 die Novembris, 1702.

A Complaint being made to the House by Sir John Paxington, against the Lord Bishop of Worcester, and Mr. Lloyd his Son, relating to the Rights and Privileges of the House of Commons;

Resolved, That a Day be appointed to take into Consideration the said Complaint. Ordered, That the same be taken into Consideration upon Wednesday the Eighteenth Day of November Instant.

Morarii 18 die Novembris, 1702.

The House (according to the Order of the Day) proceeded to take into Consideration the Complaint made by Sir John Paxington, the second Instance, against the Lord Bishop of Worcester, and Mr. Lloyd, his Son, relating to the Rights and Privileges of the House of Commons. And Sir John Paxington in his First acquainted the House, That he had reduced the Matter of the said Complaint into several Heads, which he read in his Place, and are as follow:

I. **T**HAT from after the last Parliament rose, the Bishop of Worcester took upon him to send to me to do my part in standing in it, called Knight for that Cause, and to recover me, that if I would not do so, he should think himself obliged to speak against me in his Clergy.

II. He first sent Letters himself, and his Secretary first others, in several of his Clergy, with Directions to make what Interest they could against me in their several Parishes, and where they could not prevail with such words would say for me in his last Election, to give a Vote for me or with the other Candidates, they should defend them to day at Home; and in order to this his Lordship sent some Copies of the said of their respective Parishes.

III. He offered me in his Clergy, promising me and my Anguish with several Pious; and at his Conference and Election, called his Clergy to vote against me, representing me as very unfit to serve in Parliament, and threatening them with his Displeasure, if they did not vote against me.

IV. He offered me and my Anguish to several of the Laity, who were his Tenants, and threatened them, that if they would not vote against me, they should never receive my Estate under him, and that he would put his Affairs upon them, that his Successors should not suffer them or their Children to receive my vote.

V. Mr. Lloyd, the Bishop's Son, offered me, and gave scandalous Characters of me to several Freeholders, whom he solicited to vote against me, and told them, I would for bringing us a French Government.

VI. The Bishop's Secretary offered me several Freeholders in the late Election, representing me as unfit to sit in the House, threatening them with the Bishop's Displeasure, and told they might as well vote for the Prince of Wales as for me.

(s) It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Proceedings above-recited, shall be forthwith Printed and Published.

(s) It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Proceedings above-recited shall be forthwith Printed and Published.

(s) Morarii 18 die Novembris, 1702. Ordered, That the Evidence given at the Bar of this House, upon the Charge of Sir John Paxington, against William Lord Bishop of Worcester, and Mr. Lloyd his Son, be printed; together with the Proceedings of this House thereupon.

he should run a Sword against him, as offer him that Affront, saying at home should not have his turn. This was such a great Examination would you against Sir John Pakington, he should never renew any thing with him; and he would set such a Mark upon him to show his Successors, that neither this Examination, nor any of his, should ever cease their Effects any more. This Examination answered, My Lord, you have often told me, that I and my Ancestors have told our Estate under the Bishoprick for many Hundred Years, as appears by your Books; and I hope your Lordship will not do to fill a thing as to run me and my Children: His Lordship replied, It is your own Fault, you may thank yourself for it. Being asked, Who he voted for? He said, for Sir John Pakington only.

Mr. Robert Wilson being examined, said, That presently after Mr. Lloyd, the Lord Bishop's Son, came from London, before the last Election, he first for that Examination, he professed him to give his Vote for Mr. Bromley and Mr. Walshe. This Examination told him, that he had promised Sir John Pakington already. Mr. Lloyd told him, he was sorry, but he could not give him his Vote, for he was unfit to be a Parliament Man, for he was a Whoremonger and a Drunkard. He told this Examination then he must engage to stay at home and not vote; and bid him consider of it, and come to him again. Accordingly this Examination went to Mr. Lloyd on Monday, who asked him if he had altered his Resolution of voting for Sir John Pakington. This Examination insisted, that he had given his Promise: Mr. Lloyd told him he was acquitted from that Promise; for Sir John was a very unfit Person. That he inherited his Father's Lust, Gratitude's Vice, and not his Grandfather's Virtues: That he would have him stay at home and protect himself; and then he would have persuaded him to pretend to be sick. But this Examination still insisted that he had given his Promise to Mr. Walshe, to vote for Sir John Pakington. Mr. Lloyd then told this Examination, That Sir John Pakington voted for being in a French Government, and so did Mr. Walshe, and all that Party: And if this Examination did not please the said Mr. Lloyd in his Voting, this Examination must never come near him more.

At the time of the Election Mr. Lloyd came to this Examination, at the Booth where the Election was, and told him, he was better than his Word, for he had not only voted for Sir John Pakington, but made Intereſt for him; and further told this Examination, He would be even with him. And accordingly, when this Examination was Hunting with him after the Election, he sent his Servants and broke open this Examination's Stable Door, and took away his Settop-Dog, and his Gun and Nets, which this Examination had Leave from him to keep in the Lord Bishop's Manor, and the said Mr. Lloyd had often made use of them for his own Diversion: And when he complained to Mr. Lloyd about it, he reproached this Examination for having voted and made Intereſt for Sir John Pakington, and reminded him of his Promise at the Election, That he would be even with him. This Examination further said, That he had been, before the Dog was taken, to wait upon the said Mr. Lloyd, and offered him to put away his Dog, Gun and Nets, of the which any Offence; and that Mr. Lloyd said he need not do that, that those were Trifles, and therefore this Examination thought he would have fined his Dog: Mr. Lloyd replied, If I had told you what I intended, you would have sent your Dog away. This Examination being asked, Whether there was any Warrant for breaking open his Stable, said, That he understood Mr. Lloyd had granted a Warrant to take his Dog and Nets, but that there was no Comable with them when they broke open the Door.

Mr. Richard Grym being examined, said, That Mr. Lloyd, the first Sunday after he came home, asked this Examination whether he had promised his Vote for any one, and for whom? He replied, he had promised Sir John Pakington. Mr. Lloyd told this Examination he did very ill to promise before the Lord Bishop came down; and that he should have his Lord's ill Will if he voted for Sir John Pakington, for he was not a fit Man to sit in Parliament, for he was to bring in a French Government. Four or five Days before the Election, Mr. Lloyd sent to this Examination again, and desired him to vote for Mr. Bromley and Mr. Walshe. This Examination replied, that he ought to be as good as his Word, having promised Sir John Pakington. Mr. Lloyd then told him, he should have the Lord Bishop's ill Will, and would have him stay at home. This Examination then said, he would go, because he had promised. Upon that Mr. Lloyd replied, If you do go, I with you may be lame a Month after it. At another time, Mr. Knave, the Lord Bishop's Secretary, desired this Examination to stay at home, and not appear for Sir John Pakington, for the Bishop would be very angry with him if he should. This Examination answered him, that he had taken in a Piece of Land, and that Mr. Knave told this Examination, that since he would not please my Lord Bishop in voting against Sir John Pakington, he would throw open his Inclosure; and accordingly the said Inclosure was twice thrown open, and his Quick Hedge taken away: And that one Groggins, a Servant of the bishop's, told this Examination that he did it by Mr. Evans's Order.

Mr. Evans being examined, said, That some few Days before the last Election, there was a Meeting of some Neighbours, where Mr. Evans, the Bishop's Secretary, was present. Mr. Evans told the Company, they were all honest Men of one mind, except Mr. Mansard, pointing to this Examination's son, for, says he, he is the only Man that will vote for Sir John Pakington, who is not fit to be a Parliament Man, for he is a Drunkard and a Lover of Women: Which put this Examination into a Passion, and caused him to swear, and the said Mr. Evans pretended to number the Oaths by his Barman. Afterwards the said Mr. Evans sent the Bishop's Keeper in Mr. Evans's Name, to fetch this Examination to him, who told him, he must pay five Pounds for Swearing, but it he would vote for Mr.

Bromley and Mr. Walshe, he would remit it. This Examination told him, he would consider of it. Mr. Evans told him, he had as good vote for the Prince of Wales as for Sir John Pakington. Being asked, who told him he would remit the Five Pounds; he answered, Mr. Evans.

Thomas Tauty, Gent. being examined, said, That the Day before the last Election, being in the College Church at Worcester, just as his Lordship went out of the Church, Mr. Evans the Bishop's Secretary came to this Examination, from his Lordship, and told him, That his Lordship hoped this Examination would not vote for Sir John Pakington, for that Sir John was a very ill Man, and voted ill in the House of Commons. This Examination replied, if he voted at all, he should vote fairly for Sir John Pakington. And this Examination asked Mr. Evans, What was the Reason his Lordship made such Intereſt against Sir John Pakington. He told him, that Sir John Pakington had abused his Lordship; and asked this Examination if he had been the Governor of a Churchwarden, and of a Lay Churchwarden. This Examination asked him, if the Lord Bishop had wrote his Character of a Churchwarden: He said, he could not tell, but that his Lordship had been and approved it; and that his Lordship did not think Sir John Pakington a fit Person to represent the County. And then he was ordered to withdraw.

Sir John Pakington inform'd the House, That he had several other Persons to speak to the last Particulars that the Witnesses had already given their Evidence to: But that having detain'd the House so long already, he would submit what his Witnesses had said to the Judgment of the House, and so withdrew.

Whereupon the House, after mature Consideration, came to the following Resolutions:

Resolved Nemine Contradictore, That Sir John Pakington by his Evidence fully made out the Charge which he Exhibited against the Lord Bishop of Worcester.

Resolved Nemine Contradictore, That Sir John Pakington has by Evidence fully made out the Charge against Mr. Lloyd, the said Lord Bishop's Son.

Resolved, That it appears to this House, That the Proceedings of William Lord Bishop of Worcester, his Son, and his Agents, in order to the undoing of the Election of a Member for the County of Worcester, has been Malicious, Unlawful, and Arbitrary, in high Violation of the Liberties and Privileges of the Commons of England.

Resolved, That a humble Address be presented to Her Majesty, That she will be graciously pleased to remove William Lord Bishop of Worcester from being Lord Almoner to Her Majesty.

Ordered, That the said Resolution and Address be presented to Her Majesty by four Members of this House as are of Her Majesty's most Honourable Privy-Council.

Ordered, That the further Consideration of the Matter relating to the Lord Bishop of Worcester, be adjourned till this Day Sevennight.

Ordered, That Mr. Attorney-General do prosecute Mr. Lloyd, the Lord Bishop of Worcester's Son, for his said Offences, after his Privilege as a Member of the Lower House of Convocation is out.

Parliament doth Novemb. 1702.

Mr. Comptroller reported to the House, That their Resolution and Address to Her Majesty for the removing William Lord Bishop of Worcester, from being Lord Almoner to Her Majesty, had been presented to Her Majesty; and that Her Majesty was pleased to give this most gracious Answer:

I AM very sorry that there is Occasion for this Address against the Bishop of Worcester: I shall order and direct, that he shall no longer continue to supply the Place of Almoner, but I will put another in his Room to perform that Office.

Resolved, That the most humble Thanks of this House be returned to Her Majesty, for Her Majesty's most Gracious Answer to their Address relating to William Lord Bishop of Worcester.

Ordered, That Mr. Comptroller of Her Majesty's Household do return the said most humble Thanks of this House to Her Majesty.

Parliament 25th Novemb. 1702.

The Order of the Day for taking into further Consideration the Matter relating to the Lord Bishop of Worcester, being read.

Ordered, That the Evidence given at the Bar of this House, upon the Charge of Sir John Pakington against William Lord Bishop of Worcester, and Mr. Lloyd his Son, be printed; together with the Proceedings of this House thereupon.

Ordered, That the Clerk's Books in relation to the said Evidence be examined; and that Mr. Speaker do take Care of the Printing the said Evidence and Proceedings.

Ordered, That the further Consideration of the Matter relating to the Lord Bishop of Worcester be adjourned till this Day Sevennight.—The further Consideration of this Affair was twice adjourn'd, and then dropt.

* The Lords, shew'd it to their own Proceedings of the Commons, as well a Member of their Honorable Assembly, and one who was intimately conversant with his Privy, Clergy, and Learning, did on the 19th inst. upon an Address to the Queen, wherein they desired her Majesty to be pleas'd to give leave to the said Examination, to be heard in open Court, and to be heard by other Subjects of England, to have an Opportunity of making his Defence, before he should say any Part of Parliament; and thereupon the House desired Her Majesty, That she would be pleas'd not to give the Lord Bishop of Worcester from the Place of Lord Almoner, nor to give any Mark of her favour towards him, till he be found guilty of some Crime, by that Court of Law. Which being presented to the Queen on the 20th, Her Majesty made the following Answer:

I agree that every Peer and Lord of Parliament, and indeed every one in Person, ought to have an Opportunity of being heard, by any Masters selected amongst themselves, before he is punished. I have not yet received any Complaint of the Bishop of Worcester, but I had upon it no unbounded Right to continue or discontinue any Peer.

The said Peer the Lord Bishop and declared unanimously, that they did not think it their Duty to suffer any Peer of Parliament, by any Proceedings of the House of Commons, otherwise than according to the known and usual Rules and Methods of Parliament. On the other hand, the said Learned Secretary, Comptroller of Her Majesty's Household, having attended the Queen with the Resolutions and Address of the Commons, for the removing the Bishop of Worcester from being Lord Almoner to Her Majesty, she was pleas'd to advise in April. *Annals of Queen Anne, Vol. I. Page 123, 124.*

Richardus Talboys Willielmus Bell & Richardus Heydon ad tunc & ibidem ad prefatum Constabulari Burgi predicti videntes premissum non ignari sed machinantes & fraudulenter & malefice intendentes eundem Mattheum Abby in hac parte damnum & de privilegio suo de & in premissis predictis impetere & tollere intendentes eundem Mattheum Abby suffragium suum ad eligendum dices Burgenses pro Burgo illo ad Parliamentum predictum dare permittebant ad suffragium ipsius Matthei pro electione illa non acceptare neque alioquin ac deo Burgenses de Burgo illo pro Parlamento predicto Mattheo Abby ad se prefate exactio sine aliquo suffragio ipsius Matthei Abby ad tunc & ibidem vixit brevis & precepti predicti edicti fuerunt in executionem predicti privilegii ipsius Matthei Abby de & in premissis predictis. Unde idem Mattheus Abby dicit quod ipse damnum est & damnum habet ad valentiam ducentarum Librarum & inde producti Scilicet, &c.

Et modo ad hunc diem scilicet de Veneris proximo. post Octavas sancti Hilarii illas ecclesie Terrasque aliquos eorum predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon habuerunt licentiam ad Billam predictam interloquendi & tunc ad respondendum, &c. coram Domino Rege apud Westmonasterium veniunt tunc predictus Mattheus Abby per Attornatum suum predictum quem predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon pro Johanne Barbone Attornatum suum : Et idem Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon defendunt vim & injuriam quando sic. Et dicunt quod ipsi non sunt inde culpabiles & de hoc ponunt se super Patenti & predictis Matthei Abby similiter sic. Unde venit iuratus coram Domino Rege apud Westmonasterium die Jovis proximo post Octavas Pentecostes die Marie Virginis & qui nec sic ad recognitionem sic. quia tunc sic. item dies dictus est pariter predictis ibidem sic.

Postea continuato inde processu inter partes predictas de placito predicto per Juratum Patre inde inter eos in respectu coram Domino Rege apud Westm. utrum dicti Mercarii proximo post quidemam Pasche extunc proximam frequentem nisi iudicium Domini Regis ad Affias in Consuetudine predicta expensas assignari prius die Lune sive die Martis apud Aylstrey in Consuetudine predicta per formam Statuti, &c. veniunt pro defectu Juratorum, &c. Juratorum decem. Idibus Domini Willielmus Tertius super Rex Anglie sic. item fuit clausum extuncam ad etiam ante eundem diem loquela predicta adjuvancia fuit per breve Domine Anne nunc Regine Anglie sic. de communi adjuvamento eorum eadem Domina Regina apud Westmonasterium usque a die Pasche in tres septimanas ad quas quidem tres septimanas Pasche coram eadem Domina Regina apud Westmonasterium venit predictus Mattheus Abby per Attornatum suum predictum & prefati iudicium coram quibus, &c. miserant hic Recordum suum coram eis hic in hoc verba, scilicet, Postea die & loco infra contentis coram Edwardo Ward Milite Capitulo Barone Secretarii Domine Anne nunc Regine Anglie, &c. & super Capitulis Barone Secretarii Domini Willielmi Tertii super Regis Anglie & Thomas Knight Armigeri hac vice affectio eadem Edwardo Ward, & Thomas Barry Milite ac Barone Secretarii dicte Domine Regine nunc & super ac Barone Secretarii dicti super Regis iudicium ipsam Domine Regine ad Affias in Consuetudine Burge expensas assignari per formam Statuti, &c. prefate prefato Thomas Barry non expectato vixit brevis de si non amaret, &c. veniunt tam infra nominatus Mattheus Abby quam infra scripti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon per Attornatos suos infra contentis & Juratores Jure inde intra fit mentio exacti similiter venerunt qui ad venientem de infra contentis dicunt edicti trahi & jurati dicunt super Sacramentum suum quod predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon sunt culpabiles de premissis in relatione in suffragium inter eos in modo & forma predictis Matthei Abby interius versus eos queritur. Et addunt domus ipsius Matthei occasione infra contentis alia missa & caligata sua pro ipsum circa Sessionem suam in hac parte affissa ad quinque libras & pro Milde & Caligata illis ad quadragesima solidos; sed quia cura dicte Domine Regine nunc hic de Iudicio suo de & super premissis reddendo nondum adfuit, dies inde datas est prefato Mattheo Abby coram Domina Regina apud Westmonasterium usque, item Veneris proximo post crastinum sancti Trinitatis de Iudicio suo inde audiendo eo quod cura dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Abby per Attornatum suum predictum; sed quia cura dicte Domine Regine nunc hic de Iudicio suo de & super premissis reddendo nondum adfuit, dies inde datas est prefato Mattheo Abby coram Domina Regina apud Westmonasterium usque, item Sabbati proximo post Octavas sancti Hilarii de Iudicio suo inde audiendo, eo quod cura dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Abby per Attornatum suum predictum, sed quia cura dicte Domine Regine nunc hic de Iudicio suo de & super premissis reddendo nondum adfuit, dies inde datas est prefato Mattheo Abby coram Domina Regina apud Westmonasterium usque, item Veneris proximo post crastinum sancti Trinitatis de Iudicio suo inde audiendo, eo quod cura dicte Domine Re-

gine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Abby per Attornatum suum predictum, sed quia cura dicte Domine Regine nunc hic de Iudicio suo de & super premissis reddendo nondum adfuit, dies inde datas est prefato Mattheo Abby coram Domina Regina apud Westmonasterium usque, item Sabbati proximo post tres septimanas sancti Michaelis de Iudicio suo inde audiendo, eo quod cura dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Abby per Attornatum suum predictum super quod vim & per curiam dicte Domine Regine nunc hic de premissis intellectis omnibus & singulis premissis maturam, deliberatione inde habita consideravit et quod predictus Mattheus Abby illi caput per Billam suam predictam sed pro falso clamore sic inde in misericordia, &c. Et predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon erant inde sine die, &c.

Mr. Speaker, (Mr. Harley, afterwards Earl of Oxford) after the Reports were over, told the House, That he thought it to be his Duty to put them in mind of the great Consequence and Importance of this Matter, and that it behooved them to take very great Caution in their Proceedings, not only that the Grounds and Foundation be good, but also that the Method and Manner of treating it be according to ancient Usage and Custom of Parliament: And to that End he desired the House would give him Leave to shew this Matter, as it appeared to him, and according to what occurred upon the failures to his Memory, that the House might take proper Measures upon this Occasion.

Mr. Speaker then proceeded to give the House an Account of the State of Elections by Custom or Common Law, and that the great Alteration in Point of Elections was in the Beginning of Hen. IV's Time, since whose Reign the Return for Parliament have been made by Indenture. That by the Statute of 7 H. IV. there is a Method prescribed of Election and Return, and the Creation he took to be that: H. IV. came to the Succession of the Crown by the Deposition of R. II. when the Parliament was sitting. That Parliament was continued to H. V's Time: For tho' in the Rolls it was call'd a New Parliament, and Returns were made as by the Sheriffs of the Counties, and also by the Boroughs, as if it was a new Parliament; yet it was the same Parliament, but they were the same Men, and there were two Days between one Parliament and the other, to have a new Election. But Hen. IV. having made such an extraordinary Step, he would not leave it as a Precedent to be found out. Afterwards, when Times were a little more settled, in his fifth Year, and that Practice was necessary to be condemn'd, it was provided, at the great Complaint of the Commons, that it should be done by Indenture, that the time or like Decree should never be put upon the Kingdom afterwards, and one Part was to be kept below. This continued for about four Years, when there was another Complaint of the Proceedings of Sheriffs (he said he need not mention the Regulation of forty Shillings a Year, and some other Things which are not directly to this Case); and upon that there was a Penalty put upon the Sheriffs of a hundred Pounds, which he took to be in the eleventh Year, and it was put under the Inquiry of Judges of Assize, and so it stood all that King's Reign till H. V. And there there was another Law made for Elections and Elections, that they should be all returned. Some of the Law Books give a pretty Confusion of it, that there was such a Law, yet the Custom of Parliament was to be the Rule. But he said he thought it to be a better Confusion, That it being then reckon'd a Service, and a hard Service, none but Residents in the Borough were compellable. Thus it continued till about H. VI's Time, and then if the Sheriffs had made a wrong Return, if indicted or prosecuted at the Assize, there was to be immediate Execution for the Hundred Pounds, without any Traverse. Upon this there was a Statute so allow the Sheriff a Traverse for this Hundred Pounds, and the Sheriff not to be liable to it till he legally convicted, &c. and that was about a Year afterwards, that the Parliament was call'd it necessary to make another Act about H. VI. and then there was great Complaint again of the ill Proceedings of Sheriffs: And the Law was enforced again, and it was declared who should be the Elections, and the Sheriff was made liable to the Penalty of an Hundred Pounds, and Imprisonment without Bail or Mainprize, and it was enforceable by the Judges of Assize. Another Statute was made the 10 H. VI. which enforce the Manner of Elections, so it stood. Then 23 H. VI. there are two Statutes, one relating to the Wages of Knights, Citizens and Burgesses, and how they should be levied; another relating the Statute of H. V. and H. VI. and it says, That there were not sufficient Penalties on Sheriffs, who besides that sometimes they sent no Writs to Boroughs, made insufficient Returns, &c. And the Mayors and Burghs were above the fine; and therefore over and above the first Penalty of a Hundred Pounds, they had another Penalty of an Hundred Pounds more, which was to the Plaintiff, with Costs of Suit, and this was to be tried before the Judges of Assize, and the Courts at Westminster, and at the Sessions; and the Clerk was to be either for a Knight, or Burgh, or any other Person that would bring the same, but within a Time limited, three Months from the Commencement of the Parliament. Then Election stood in Point of Law, till the modern Alteration within every Body's Memory. And he hop'd whatever time Gentlemen took this Matter into Consideration, they would do it as became the House of Commons, and examine all Particulars, as well as the Judgments of Law, and they would do what became a House of Commons, and that nobody would fear the Dignity of the House of Commons impair'd. And however Differences were between them in other Talents, they would be unanimous in preserving the Rights of the Commons, and of doing it in a right and judicious Manner: And offer'd to their Consideration, whether it would not be best to proceed in the old Method, by going into a grand Committee for the Courts of Justice to consider this Matter, and that by taking this Course, they would walk in the Steps of their Predecessors, and avoid many Inconveniences, which were tally to be gotten when they happened, by taking another Course.

But it being moved and seconded, to consider of the said Reports in a Committee of the whole House, the Question was put, and carry'd, That

from even the King in like Matters. The tenth of these Instances is above two Hundred Years ago, and neither of them make any thing for a Power in the Lords to determine the Elections of the Commons; but on the contrary, rather for a Power to be delegated by the King, and the Instances are but Two.

Now, I say, Sir, we are, and have been in Possession of this Right for a very great Length of Time, and have it confirmed to us by Act of Parliament; for the late Act of 7 and 8 of King William, hath in effect declared, that the Determination of the Right of the Electors is in the House of Commons; for they say, that the Sheriffs and Officers of all Seats, shall follow the full Determination of the House of Commons, as to Rule and Guide in such Cases. And surely nothing is more absurd than to say, that this House full examine, try, and determine who are elected; and yet *Wynbiller-Hall*, and the Lords shall examine and determine the Right of the Electors: How can any one examine the Election, but the first Step he takes must be to consider and determine who are the Electors? And the determining the one, is determining the other.

I would trouble you a little with the Reasons they give why this Action should lie. It hath been said, and I think 'tis true, for the Honour of England, and I believe it hardly can be found to fail, That where a Man hath a Right, and a Wrong done him, he is forbidden to have a Remedy; but now here is the Application of this Rule. We shew above, by the same Law that settles the Right, and declares the Wrong, in consequence where the Remedy is to be had. For though you have a Remedy, you mislay that which is the proper Remedy, and the same Law that settles the Right, and declares the Wrong, gives the Remedy, you must then go to the Place where the Law directs you Remedy, not where you think would desire the Remedy. Therefore, says my Lord Coke, in his Preface to his *4th* report, and likewise *11* and *15*. We have several Jurisdictions, some Ecclesiastical, some Temporal, &c. some governed by one Law, and some by another; and all must have their Rules and Bounds, which must be observed. If your Right be Ecclesiastical, as for Instance, before the Statute of *Tithes*, could you in *Wynbiller-Hall* have brought your Action? Or if this had been joined as such an Action, and the Parties had gone to Trial, will any body say, but that the Judges must have reversed Judgment, and said that 'twas out of their Jurisdiction? If a Lord of a Manor should refuse to admit a Man, so when a Surrender is made of a Copyhold Estate, the Lord has done him Wrong, and Damage too; but yet he cannot bring his Action at Law for it, for it is an equitable Right, and he must go to a Court of Equity for his Remedy, and so I could put a thousand Instances, but I will not spend your Time. So that I say, 'tis not enough to say you have a Right, and must have a Remedy, and therefore you may bring your Action at the Common Law; but you must seek it in a proper Place, though perhaps Costs and Damages, and a Trial by a Jury, may become defensible by the Party.

Now, Sir, I would know, Whether that is not a Matter of Parliamentary Jurisdiction, and also a Parliamentary Right? Is any Thing more plain? He that hath a Right to vote, hath a Right to send a Person to represent him, and sit in Parliament; therefore 'tis a Parliamentary Right: Where then shall he find his Remedy? In the House of Commons, where you have a Right to send a Person to sit and represent you; there you may complain, I was denied my Vote, or misused upon the Election. This, by the Law of Parliament, shall be examined here, and for this Purpose you constantly appoint a Standing Committee of Electors.

Indeed I cannot but wonder at the bringing of this new-invented Action, for if there be any thing certain in the Common Law, 'tis this, That where you claim a Right to any thing, it must be founded upon common Usage in that Cafe, or in some Cafe that carries the same Reason, and is just like it; for the Common Law, generally speaking, is nothing else but Common Usage. Now let us see for the Usage in this Cafe, and whether there has been any thing like this Action before. Say they, How do you know but such Actions have been brought before? I do not for that there can be a stronger Negative Proof in any other Cafe than in this; for we have had Parliaments, as appears by our Statutes in Print, for five hundred Years, and we have had Parliaments in every Reign since, and in several Reigns a great many Parliaments: And let us consider, whether this Cafe would not have happened frequently in five hundred Years, in so many Elections in Counties, Boroughs, and Cities, where there are such infinite Numbers of Electors. And therefore this Cafe must frequently have happened if such an Action lay at Law. If it be asked, How do I know that such an Action hath not been brought before? I answer, 'Tis wonderfully plain there never was such an Action brought before; for as we have our Acts of Parliament in Print, so we have faithful Reports of all our Law-Cases, which we call the Year-Books, and which are Memorials of all Cases so long back as from E. II's Time, that is, 400 Years, followed by a Series of Reports till this Time, and are now grown so numerous, that they become a Burthen. And I will desire any Gentleman of the Law here, or in England, to shew me the Footstep of any such Action as this, or of this Kind till now, ever brought before. We have always said, *Our Parliaments were never Alters*, and greater than our own; and so they were: But such an Action as this never came into their Thoughts.

But it may be said, How does it appear that there was Occasion for these kind of Actions formerly, for Men heretofore were unwilling to sit in Parliament, they were hired, and almost forced to it, and it was hard to get Men to come up? I answer, It was so for otherwise for many Years past, that so early as H. IV.'s Time, there were great Com-

plaints about Elections, and the Sheriffs in these Days were apt to do wrong, as appears by 7 H. IV. cap. 15. And therefore 21 H. IV. cap. 1. there was appointed One Hundred Pounds Penalty to the King, on the Sheriff that did not do his Duty, according as the Statute does direct. So that it does appear there was Occasion for these Actions, if they had lain by Law; and yet you will find that never till 23 H. VI. did it enter into the Thoughts of any Man, that an Action at Common Law could be brought for an Injury as an Election; and therefore that Act recites, that there was not before that Time a sufficient Remedy for the Party grieved, and therefore gives a Hundred Pounds to the Party, as well for a Knight, and Forty Pounds for a Clerk or Burgess, and that by a Law made on purpose to help the Party to an Action where there was no such Remedy before. That it recited all the former Cafe between *Neill* and *Stride*, in a *Sidley*, *11* *168*. (in that Times they first five Knights of the Shire out of *Berkshire*) Mr. *Neill* brought his Action against *Stride* the Sheriff; and he alleged, that he being One of the Five chosen for that Cause, *Stride* had maliciously and fully refused to return him, &c. and the Jury gave him Fifteen Hundred Pounds Damages. This Action made a great Noise, and the Judges looked upon it as a great Novelty, and thought fit to consult the Parliament in it; (in former Days in Matters relating to the Parliament, they used to consult the Parliament) and the Judges heretofore when they were asked their Opinions in difficult Matters relating to the Privileges, or Law of Parliament, would say, This was above us, and therefore to be decided by Parliament. And this Cafe being referred to the Parliament, they looked upon it as so extraordinary an Attempt, that though Mr. *Neill* had a Verdict for fifteen hundred Pounds Damages, yet he never got a Farthing of the Money, or any Benefit by the Verdict: *Sed de domo.*

After this, came the great Cafe that hath been mentioned of *Stuart* and *Barnardiston*; and methinks that deserves very much our Consideration, and how far the Determination of the House of Peers ought to be a Rule in this very Cafe. This Cause fell forth with great Prospect of Success: Sir *Samuel Barnardiston* in this Cafe, did not fight the Determination of the House of Commons, but felt petitioned this House as the proper Place to determine his Rights, and had it decided for him. That it was the Petition did, indeed, and the other Return was taken off the 11th, and then he brought his Action at Common Law, and laid forth this whole Matter, and that the Sheriff fully and maliciously returned another writ him, whereby he was kept out of his Right, &c. a long Time, and put to very great Expence and Costs. This Case to be tried at the Bar of the King's Bench, and there was a Verdict given for Sir *Samuel Barnardiston* for eight hundred Pounds. This was looked upon as a great Cafe, and my Lord Chief-Justice *Hale* bid all Persons about him take Notice, that they did not determine the Right of the Electors, for the Judgment in this Cafe belonged to the Parliament; but, first, since the House of Commons had determined the Right, he thought they might follow their Judgment, insofar as in Damages, and to give Judgment for the Damages the Jury had given the Plaintiff.

This Cafe was looked upon to improper for the Common Law, that upon a Writ of Error brought in the Exchequer-Chamber, that Judgment was reversed, because the Common Law could not any way accommodate with Elections to Parliament, further than was directed by Acts of Parliament. It might have been said, and I know 'twas said, that the Reversal of this Judgment was by an extraordinary high Hand: And therefore, upon the Revolution, as the very beginning of King William's Reign, Sir *Samuel Barnardiston* brought a Writ of Error in Parliament, complaining, that in the Exchequer-Chamber they had reversed this Judgment unjustly, and against what their Reasons, as may be observed from the Journal of the House of Lords, which were the Reasons of some very low proceeding Lords.

First, Because it was a denying Sir *Samuel Barnardiston* the Benefit of the Law, which gives Relief as to all Writs and Injuries, and here is a very great Damage to the Plaintiff, and therefore he ought to be repaired.

Secondly, Say they, if it should be allowed that *Suffragan*, and *Ballivus* may make false Returns, and no Remedy but a Hundred Pounds Fortnight, it would be of dangerous Consequence, and might lead to the packing of a House of Commons, which may overturn the whole Constitution. But the Peers then did not think these Reasons sufficient for this new Action at Common Law, and accordingly the House of Peers affirmed the Judgment of Reversal in the Exchequer-Chamber, and said, that the Judgment was well reversed; for that no such Action did lie at the Common Law, though the Injury done did tend to the Plaintiff's Damage; and all the other Matters which are now suggested, were insisted upon; and thus it stands to this Day. And yet now 'tis bid upon the same Reasons, the Action does lie for this Person, though he be only an Elector, and must receive much less Damage, than the Person elected; and there is no one Reason for the Elector, but holds more strongly for the Elector. The Elector cannot maintain an Action, and yet now 'tis said that one of the Electors may, though he can have no substantial Damage, for if a Man comes and gives his Vote (as here in this Cafe), 'tis not in the Power of the Officer to hinder him of the Benefit of it; his Vote will be as well given, as if the Officer had put it down, and thus with Respect both to the Person who gave the Vote, and him for whom he voted, and is really 'tis no substantial Damage to either Man.

The next Thing I shall mention to you is another Cafe of Mr. *Oxley*: He brought his Action against the Sheriff of *Surrey* for making such a Return upon him (I believe I have the Glasseman in my Eye who brought that Action) he declared in the same Manner that it was done fully and maliciously, and had a Trial and a

* Sir *Joseph Boscawen* in his Publication of the Fundamental Rights of the Commons of England, Page 30, 31th. In the Cafe of *Stride* and *Neill*, An. 1681, in an Action as the Case, against the Sheriff for a false Return, to the Damage of *Neill*, after Verdict for the Plaintiff, and 1000. Damages, the Court observed, that *Neill* obtained the Cafe into Parliament, proper distinction, Whether the Action did lie or not? Where it is to be observed, that it was so adjudged into the House of Peers, but into the House of Commons, as the only proper Judges, in all Cases of this Nature concerning Elections: To be careful were they of the Rights of the Commons.

And let not the Inquiry of those Times of Rebellion be objected to this Instance; the Arguments from thence extremely confirm the Right of the Commons: for it is confessed that Cromwell had this created a new House of Lords, and a great retrenching of a House of Commons to electors; but afterwards that in 1659 he had formed a new Model of an House of Commons, and overturned the Method of Election; in depriving all the Members of the County; yet the Name of a House of Commons remained; and even that was to be recovered in those Days, that none would attempt to deprive them of their electoral Privileges, of judging of Elections: No Instance could but the Judges; they thought it to be necessary, that they would not produce to intermeddle in it.

they called the Confederates of the Peace, Officers that were the first with our new Jubilee of the Peace, with the Difference only, while the Confederates made, these the Crown made. The Confederates had a great Power when they were to elect their Captains that I was in out to War, which hereafter they did, and had a Right to do so, till it was taken away from them by the Act, that sent to the Militia, then it was a very extraordinary Years before. The making of Sheriff, was given to the Crown; we have nothing left now but Names of Fines in the Court, and even that is to be empty, that the Jury is returned by an Officer that the Court puts upon the Country.

But yet I am not for carrying the Things further than we have a Right to do; I am for leaving what we have, and as the Reason I mention I mentioned upon the allowed Jurisdiction of the House of Commons, we have always allowed them a Right to take it out of the Writ of Error. The Parliament, in what I have said, did declare the Right of Justice to be one of the Rights of Peers, and I never found any Instance to the contrary, if the Party happens to be Masters of Law, and left the Fines to be tried by the Commons, nor did I ever know that Right of the Lords questioned till now.

A great deal hath been said for and against the Right of bringing this Action; I do not think that that is now at Question. The Question is, Whether a Judgment being given in the King's Bench, a Writ of Error does lie in the House of Lords? But whether a Writ of Error does lie in the House of Lords, then have we seen in the Cafe before you, that is another Thing. I speak in the Right of nothing but of this particular Writ of Error, nobody has denied, but that they have a Right to the Writ of Error of Error in general upon a Judgment given in the King's Bench, but by this, the Lords ought to see how to do it in this particular Cafe; and several Reasons have been given for it.

First, here is the Privilege of the House of Commons in question in the Cafe; That hath been argued and settled on; but I confess, that Argument does not influence me. The Lords have held Pleas of a Writ of Error, in which the Privilege of the Commons hath been in Question, and the Lords have done Rights to the Commons in it, particularly in that Matter of the Parliament of 1649, when they were supposed to have done irregular Things in the House of Commons, and were punished for it by the Commons in the King's Bench, and were sent in King Charles II. I am, whereupon a Writ of Error was brought in the House of Lords, and that Judgment reversed in the Time of King Charles II. But in the Lords did Right to the Commons in the Matter of Privilege of the Commons, for it was for trying Heals in the House of Commons, and I think every body has considered, when such an Argument is made by the House of Lords, and nobody ever said that they had a Right to do so. Some Things are to be seen, at opening, that by a Writ of Error in the House of Lords; and I believe, if you look a little back, there have been Judgments given in the House of Lords, not only in Matters of Law, but against the Privilege of the Commons, and the Judgments stand unreversed, though I think they are to be reversed, and I know to other Means to do so, but by Way of Error in the House of Lords. I think there is one Judgment given in the House of Commons, in the Year 1649, for Leasing Papers to be printed, which he did not do, and so on.

But is another said, that a Person hath no Cause by Order of this House, it was the Order of the House, and the House of Commons, the Party brought his Action, the Court gave him his Warrant, that it was done by Order of the House of Commons, and no Judgment was given against him, and this Judgment stands unreversed.

Now what Method have you to reverse these Judgments, but by Writ of Error? If you think to do it by a Bill in this House, that must likewise pass the House of Lords, and so will be the same Thing as a Writ of Error.

Another Thing is said, that this Person was not damaged, or if he was, there are such a Number of Persons who were then likewise damaged, that may bring their Actions, that nobody will exercise such an Office. I think that Argument ought not to prevail, for at that Rate you will allow the Officer not to be a Judge, but the supreme Judge, and the Parties damaged shall be without Relief, he may do what he pleases, and he shall never be questioned afterwards, save in this House, which I will consider by-and-by. This you say you punish as if they that misbehave himself in Matters of Elections, and that is punished now very much; but at the same Time you punish the Officer, the Person damaged hath no Satisfaction, though our Law allows Satisfaction in Cases where he himself the Wrong shall not be punished, and allows Satisfaction in all Cases where a Person is punishable, if another hath received a particular Damage.

A Third is said to be fixed to the King or Queen, that is a Privilege, but if he pays for much to the Party damaged, that is Satisfaction. If a Man's House be burnt into ashes, he shall not be punished, but the Person damaged shall have Satisfaction: But in this Cafe you allow the Officer shall be punished, but you will not allow the Man injured any Satisfaction for the Damage he has received, which cannot be supported by Reason, or by the Authority of any particular Case.

In all Cases I take it to be true, where a Man is punished for doing another Damage, the Person damaged shall have Satisfaction. But that Rule is to be held in the same Case.

I do not think there is any ground for our concern, and if you give every one an Action, it will be so bad of this Action, and therefore none shall have an Action. This is a strong Argument; if a Man injures one or two Persons, and shall have an Action for their respective Damages, but if he injures no more, more of them shall have an Action, as if when a Man is moderately angry, he shall make Satisfaction; but if he is excessively outrageous, he shall be satisfied, and make Satisfaction to none. This shall be made good either by Reason or Authority, which heretofore have been given. The Cafe cited, I own, is true, but you must take it in this full Sense, if any Thing is done which might have been of Damage to a hundred People, but was of Damage to none, none shall have their Action, though the Criminal shall be punished; but

where there is particular Damage done to any Person, an Action will lie for the Damification of that Person. If a Man digs a Pit, any Man may fall into it, and no Person shall bring an Action for that; but if any Person do it so, and it hath particular Damage by it, he shall bring an Action, and have Satisfaction. And, with Submission, that Argument will not hold, that because a Person may be injured he shall be obliged to make Satisfaction for the Wrong he has done, therefore, he shall not make Satisfaction to any person at all, unless he hath damaged.

It hath been said, admitting it to be so, that the Party ought to have Satisfaction, yet he ought to take his Remedy as a proper Court, as if a Legacy was given, an Action would not lie in the Queen's Bench for it, which is true. But it would have been well if that Gentleman had told as which was the proper Court to which he had an Action the Wrong suggested to be in the Cafe. If the Sheriff's Bench be not the proper Court, what Court is? This is the House of Commons is a Court, I was always of Opinion was not the Court of Judicature, my Lord of Gough, and a Court of Record. I wonder, when all this is allowed, it should be in this Court hath not a Power to administer an Oath to a Witness; I think that will seem strange to any other Court whatsoever. Every Court or Record hath Power to administer an Oath, so much that this be a Court or Record, this is a Court, it is a Court. It would have been very odd if that which was against an Action, should have been that this is a Court that can give Satisfaction, but the Law is not so, but cannot give Satisfaction, whereas I think the Court of the House was never given in this that I know of. Was it ever, or should it be had here? In such a Case, in fact, this House hath power to do, and by such Proceedings compelled the Delinquent to make Satisfaction to a Person by the breaking of a certain Seal, but that is not the Cafe before us.

It hath been said, there has been no Influence of this Kind of Action brought, and that the Court of the Queen's Bench have declared they have nothing to do with the Affairs of Elections, for that the Right of Elections ought to be determined here; and for that Purpose the Declaration of the Lord-Chief Justice Hale, in the Cafe of the Berghs and the Berghs, has been cited. I will confess I cannot but wonder at that Cafe: We did not think that the Judgment given in the King's Bench in that Cafe was finally given; and afterwards, when it was reversed, People were allowed it the Reason of it, and more, when that Judgment of the House was not reversed, but it was affirmed in the House of Lords. Nobody hath ever said that Judgment was reversed, I do not see but on the Reason several Judgments within these five Years, my Lord, even in this House, may be reversed likewise. For the Court of the King's Bench in that Cafe did not intend to a Judgment of determining the Right of Elections, for 't was after in that Case had been determined both in the House; but they only gave Damages for it. Wrong affirmed, that was all the Court did in this Cafe, and yet that Judgment was reversed. I believe there has been some Judgment given by this House within these Twelve Months, that where the House hath determined the Right of Elections, the Party grieved that he shall be allowed to maintain an Action at Law for his Damification.

But take it that there is a Difference between the Cafe of the Berghs and the Berghs, and the present Cafe. I am not where it was debated, where a Judgment was given, and the Officer was to return him, whether the better there was to be affirmed or not. I am very sure a Person before Persons were not to admit of sitting in this House, as now they are, and were Persons purchased Charters of Exemption, to be excused sitting in this House. And so it had been provided in the House of Lords. The Act that has been mentioned before expressly commands, that the Person chosen shall come, and be present in Parliament. And afterwards that was a Penalty put upon such men were chosen, if they did not appear here, to which another Penalty was added, which was, that the Person elected, if he did not come hither, he should lose his Wages. It was not intended a Damage that any Person was not allowed to sit here, but a Kindness; but that did not hold in the Cafe of an Election. Every body agrees, as the Election had a Right to choose, so there was no Statute to compel them to do so; but they looked upon it not only at their Right, but their Interest, to be present at the Election: And now can say, but in a Man's Interest to make Choice of such a Person to sit in Parliament, who hath the Power over his Estate, and Life too for aught I know, as he could trust. Nobody ever doubted that a Person who had a Right to vote had an Interest, and might be damaged if he was absent here. So that none of the Cases that have been put of the Right of the Person elected to sit in Parliament, as Knight of the Shire, or as Burgess, come up in the Cafe in Question.

I would say one thing as to the Damification of the Persons elected, there is a fine Act that gives double Damages where the Reason is contrary to the last Determination. Now I do take it, that Act supposes that a Man might have been damaged before, and if he was damaged before, he was to be the Common Law, for no Statute Law gives him any Damages. 'Tis true, that Statute gives double Damages, but still that Statute supposes there was a Damage before, as a double upon that Foundation; so that, with Submission, that very Statute runs against all the Cases that have been put as to the Persons elected.

To find, at this Rate, the Lords may come to vote in Elections. I am of Opinion the Lords have an Right to vote in Elections for a Knight of a Shire, or a Burgess, and the Reason I go upon is this, every Person who had a Right to vote ought to have been considered the Expenses of him that was elected. If he was a Freeholder, he was an Elector for the County; if a Burgess, for the Borough, and the Expenses of the Knight of the Shire were to be borne of all the Freeholders, and the Expenses of the Burgess upon all that were elect in the Borough. But the Lords were excused of that Charge, they were not to be Contributors to the Expenses of a Knight of the Shire, or Burgess, because they were of another House. There was a Law made, which says, that for Lands purchased by any Lords, such Lands should continue chargeable to the Expenses of Knights of the Shire, as they

they were before such Purchase: so that 'tis plain before that A.B. the Lords the Lords were forced to, or purchased, were coerced of that Charge.

But, Sir, I think this Matter is not to the Case in Question: This is nothing but a Collateral Action for a Detention, whereas the Continuance is not much, not above five Months; though I acknowledge the Continuance of the Suit does not influence this Case. Nor is the Question, Whether the Lords have done right, or not, in reversing the Judgments given in the *Queen's Bench* *Hearings* of error. If they have a Justification, we can't justly complain; though I am of Opinion they have done right, I think the Plaintiff in this Case was damned, and I think the Court of *Queen's Bench* ought to have given Judgment against those who did him the Injury for the Damage he sustained; and I think the Lords have done right in reversing that Judgment, and in giving such Judgment as the Court of *Queen's Bench* ought to have given.

Sir *Edward Seymour*. 'Tis enough for me that we have the Law on our Side, and we are very much obliged to the Points and Understanding of those learned Gentlemen that opened this Debate, in presenting us with a true State of our Debate. It only remains now for your Prudence to apply a Remedy. And I cannot but take Notice, that this is an Adversus without any Precedent to warrant this Proceeding; and I believe it might have remained in Bill (for I don't think there was Virtue enough in the Cobler of *Whigton*, nor had he Purse enough), if a Lord had not added that Part.

For my Part, Sir, I do not think this to be the single Influence of the House of Lords we have Reason to complain of: I think is a great Measure, by their Proceedings, they seem to hold forth, *That the Law is laid to rest*, and that they have a Justice of the House of Commons, and endeavour to get rid of them. I shall not influence in Particulars, but I hope there is not you will not let go, without applying some Remedy to, and that is, that noble Representation in which they have united you to the highest Degree, and lay all the Mischief of the last Reign, and this, as your Door. I could show you, there is nothing in it but Stull, *Popish Juries*; and we for the Consequence of it, and what Pains and Endeavours they have taken to disperse it all over the World, to make Impression upon the People. But that which I would have some Relief to, is this, That these worthy Persons that have spoke before, though they have truly represented the State of our Condition, yet they have been very tender of applying a Remedy.

It does, I think, consist of two Parts; one is what relates to the inferior Courts, the other to the Judgment of the House of Lords upon this Writ of Error. Now that there is a Right to bring a Writ of Error, the learned said, but I would take away the Foundation, and make this Declaration:

That no inferior Court below should presume to intermeddle with the Elections of the House of Commons; and I am sure then there will be no Foundation for a Writ of Error. In the next Step, with relation to the Judgment given in the House of Lords, 'tis true, the Lords make a great Complaint, That in Matters of Parliament we have addressed, without advising and consulting with them. I will not say far too 'tis justified by their Proceedings; I need not remind you of the Address they made without you, when you addressed against my Lord of *Whigton*; before you had presented your Address, they presented a Counter-Address to yours. But I take the Declaration to be here, 'tis one Thing in Matters of State, and another Thing when the Matter depends between the two Houses: Where it is a Matter of State, with relation to the Queen's Privilege being violated and invaded, as you are her great Council, you are to advise the Queen in that Matter, and not let any Thing of that Kind pass upon her.

But howsoever I would go the regular Way, by condemning this Judgment, in relation to the House of Lords; and after you have made that 'Condemnation, I would apply to the House of Lords, to see if they would recede from this Judgment of theirs. But I am afraid Arguments at Debates will help your Cause but little, you must have Recourse to Remedies that are in your own Power. We see what they did upon the last Occasion, when they thought their Privileges were concerned; they adjourned, and all to prepare the Way to make the World believe they were injured, and prepare the way for their Proceedings afterwards.

And I say, this is not a Thing that falls out by Chance, but carried on by all their Power, to represent you as inconsiderable, and to make you useful for nothing but giving Money, and then to send you Home into the Country. But if you do not keep the Power in your own Hands, you will be without Remedy. I conclude with what I mentioned in relation to the Courts below, to declare, that they have no Power to intermeddle in Matters of our Election.

Marquis of *Hartington* (afterwards Duke of Devonshire). I shall not pretend to follow that honorable Gentleman near the Bar, in all the Steps he has made, though I think I may be as regular as he. I think he has only showed, That there is not so much Reason in this Case to find Fault with the Lords, but it is necessary to find Fault with them one Way or another.

I think this is a Matter of great Consequence, and as long as I live here, and as long as I live, I shall be as tender of the Privileges of this House as any Body. I think 'tis upon the due Balance of both Houses that the Safety of the whole does consist; and I must confess, I think the Liberty of a Collier ought to be as much regarded as of any Body else, that is the Happiness of our Constitution.

I think it was very well observed by an experienced Member, That this Writ came very regularly before the Lords: If so, then I think the Question is between us, and the Persons that elected us; and I think, though Gentlemen would not formerly allow of any Distinction between the Privileges of the House, and those of the People of England, yet they must allow it now, or they can't complain that this Action is any Prejudice to this House. For when a Person offers his Vote as an Election, and is not admitted to give it, and upon such Refusal brings his Action in the Courts in *Whigton-Hall*, (which I take to be the present Case) if giving Judgment upon it be contrary to the Privileges of this House,

then 'tis pretty plain, that our Privileges do interfere with the Rights of the People that elected us.

I shall plainly give you my Opinion in this Case: I can't think this Action to be a Breach of the Privileges of this House; for, Sir, the Party grieved, can be no way relieved, but by applying to the Law, and I think the learned Gentleman below, is out in all his Influences; for he hath given an Account of People injured by you, but they were Candidates, and actually that was their proper Remedy; but in the Case of an Election, I don't see how we can have Satisfaction by applying to you.

Gentlemen talk of the Law of Parliament; I can't see how that can give any Interruption to the Law of the Land, that it shall not do Right to the Party grieved: How shall a Man, injured as the Matter I have mentioned, receive Satisfaction by applying to the Parliament? 'Tis true, the Officer offending may be punished, but the Party injured can't receive that Satisfaction he would in the Courts below, by giving him his Damages.

I think this is a Matter of great Consideration, and it is necessary to consider well of it, and not to determine hastily. I think it may be of Use to us, since there are Judges who have been of Opinion, That the Subject ought not to have his Remedy in this Case. A Judge that will cut off Fear, or any Regard to one House, do contrary to his Oath, I believe standeth Time will be influenced by the other. I think 'tis the Duty of a Judge to act according to Law, and not be afraid of either.

Mr. *Levett*. Sir, There is no Doubt but all the Judges (as hath been said) and every Body else, are obliged to behave themselves according to the Law of the Land: But the Question is, What is the Law of England in this Case? If the House of Commons has an original Right to determine all Matters concerning Elections of their own Members (as is hath been always understood to be), and if we have a Power as parish Officers for making safe Returns, or any other Modifications committed by the returning Officers; then it will not be necessary that the Judges in *Whigton-Hall* should have any Jurisdiction at all in the Matter now in Question; and if they have none, then by consequence the Lords will have as little by Writ of Error.

I do confess, Sir, when I first heard of this Case, it gave me some Apprehension that it might be of fatal Consequence (by Reason of the Novelty of it) to your Privileges, which are indeed the Privileges of the Commonalty of England which we represent: But since I have thought of it from Time to Time, and it hath been better opened by the learned Gentlemen that have spoke in this Debate, I conceive our coming to some Resolution, declaratory of our Right in this Affair, may preserve the Liberties of the House, and of the Commons of England, who have been entrusted with the Preservation of their Rights.

I think the learned Gentleman over-the-way took his Ground too narrow: I might yield him this Point, That what there is a Writ of Error brought from a Judgment in *Whigton-Hall*, is Cases where a Writ of Error lies, and where that Court and the House of Lords have a Jurisdiction, then the House of Lords are at Liberty to give what Judgment they please. But I have read, the House of Lords is not an unlimited Jurisdiction, but is bounded, as well as the Courts of *Whigton-Hall*, by the Law of England. I speak it with the greatest Reverence, that the Royal Power (which is the most Supreme in England) is obliged to the Observation of the Law; and it would be absurd at the same time to say, That any Part of the Parliamentary Constitution is not limited by the known Laws of the Land, or the Law and Customs of Parliament; and I doubt not but it will appear, a Writ of Error does not lie, and did it lie before the Lords in such a Case: And so it comes at last to this Point, What is the Law of England in this Case? And I will tell you my Thoughts of it.

I have read, and learned, and believe 'tis true, That Matters of Parliament are to be determined by the Laws and Customs of Parliament; and I believe there is as good Authority for it, as there is for Writs of Error, or any thing else; and that this Law and Customs of Parliament is a principal Part of the Law of England, and to be learned by Experience and Precedents, and I reckon that we must come to them at last. Now, Sir, let us see what Experience at Precedents we have to found this Jurisdiction of the House of Commons upon, for examining and determining Matters concerning their own Elections. 'Tis true, we have no Journals extant before E. VI.'s Time: And there is a Book they call *Synners*. I think 'tis a Book of no great Authority, and if it be, there is but a small Matter in it. I have read it over carefully my self more than once, and find only Titles of Bills depending, and when they were read; and all I learned from it was, that sometimes Bills in those Days were read four Times. And, Sir, there is as little concerning Elections in Queen Mary's Reign; but in the Beginning of Queen Elizabeth, you have the Matters of Elections plainly set down, and so they have been ever since. And from that Time to this, it hath been a standing Rule in the House of Commons, in the Beginning of every Parliament, and (as I take it) of every Session, to appoint a Committee to examine all Matters concerning Elections. Now, if the Right of Election is not a Matter concerning the Election, then I own myself under a Mistake. But if this be a material Part, and comprehended within the general Words, and if these Committees have from Time to Time proceeded to examine the Right of Election, and this House hath proceeded from Time to Time to give Judgment in such Cases, sometimes according to general Qualifications settled and adjusted in the House, and very frequently upon examining and considering the Rights of particular Voters, then I think we have as good Authority for the Jurisdiction of this House in the Matter of their Elections, as can be had for any Thing whatsoever.

I do sit in this Case, we ought to take our Ground and Foundation upon the Rights which the Commons of England have, and ever had, by the Law and Customs of Parliament to be exercised by the Representatives of their own choosing; for which Right is grounded upon reasonable Privileges and constant Usage. For if we have a Power to hear and determine the Right of the Electors, and to punish Officers for abusing them in their Right, and give Satisfaction to the Party, all which most evidently appears, not only in your Journals, but by a continued and uninterrupted Practice, Time out of Mind; then I think we need look no farther.

Side comes and moves in Arrest of Judgment, and the Court gives Sentence. But I with the Defendant had demurr'd, and then that would have put it as a Point of Law to the Judges, and if they had determin'd it judicially for you, I believe it would have gone no farther. For it is not Thing to determine it upon Demurrer, and so not but Thing, when the Cause has been try'd, and Damages given, so have the Court's Opinion or *pro factis*.

The Judges determin'd, the Action does not lie, but as Matters stand now, perhaps, in the like Cases, they will be brought a Writ of Error before the Lords, and they will give such a Judgment as they have given now, for ought I know. I should not think it proper to come to any Question now, by which you shall determine your Rights, if you are not fully satisfied about it, but it ought to be considered farther. The Law and Custom of Parliament is to be found out by Experience and Precedents: But if you are satisfied, then I thank the proper Questioners, "That by the Law and Custom of Parliament, the hearing, examining, and determining all Matters concerning Elections of Members to sit in the House of Commons, is to be by the same House." I think that it is to be your Question, or to that Effect.

The Consequence will be, if this be Part of the Law of England, as it plainly is, you may as well stand upon that Declaration, as upon any new Law to be made by Parliament, if you could get it: But I believe you have no great Reason to expect a new Law in the Case to pass in the House of Lords. Then what would you do? If you should try to get a new Law, and fail, it will be confirmed, that you had put this Power before, but endeavour'd to get it, and the House of Lords denied it you.

But 'tis plain and clear you have this Power already, and a sufficient Ground to stand upon; and I doubt not, but *Wyndesore-Hall* will take Notice of it, and the House of Lords too: If they do not, *(see Sir* Lordes *use interrupted by a Noise made by some few of the Members, who said, What then? Sir Wyndesore-Hall, I say, if they do not, it will be Time enough to confer with them afterwards. And give me Leave, I am not afraid to say, of a private Man, much more the House of Commons, have the Law of England on their Side, let them be undisturb'd ever so much, one Way or other, they will obtain their Right sooner or later. The Rights of the People of England are safe in the Hands of their Representatives than any other: If they do not like them, they cast them them out, and choose new ones; but they can't do it in the Case of the Lords.*

I beg Pardon for my great Velocity, I take it to be of Importance, to avoid all Contests with the House of Lords, and with *Wyndesore-Hall*, and I think you may do it by proposing and assenting a plain Declaration of your Right by the Law and Custom of Parliament.

Mr. Solicitor-General Sir Isaac Hearn, afterwards Lord Hearn, and Lord Chancellor. After what hath been said at large concerning the Law in this Case, especially since it hath received no Contradiction in any Instance whatsoever, I will avoid the Repetition of what has been already said, and endeavour to shorten your Debate, by bringing it something towards a Point.

It hath been said, That the Question now before you is, Whether Judgment being given in the Court of *Queen's Bench*, a Writ of Error does not lie in the House of Lords, to reverse that Judgment? I cannot, by any Means, agree that to be the Question.

But that which I take to be the proper Question before you is, Whether or no it be the sole Right of the Commons of England to determine their own Elections? If you are of that Opinion, never let your Debate grow to such a Head as to put you upon the Necessity of complaining of a Judgment of the Lords, but rather check it in its Infancy.

It may perhaps seem kind, that a Man shall not be admitted to make Use, and to have the Benefit of the Law; yet when that Thought is thoroughly digested, I believe no Gentleman in this House but will agree, 'Tis that there may be many such Instances, where you will not condone any Suit at Law. I can't give you any better Instances, than what have been mention'd to you by a learned Gentleman on the other Side, who approves of this Proceeding by Writ of Error, the Proclamation against *Sir John Williams* for publishing a Libel (as it was call'd) by Direction of this House, and an Action against the Sergeant for obeying your Commands. If such an Action should be brought against the Speaker or Serjeant, should we sit still here to see what they would do in the Courts below, and afterwards wait for the Event in the House of Lords by Writ of Error?

'Tis very true, that Judgments that are question'd by that Gentleman continue still unrevok'd. As to that given against the Speaker, he mention'd it as a Precedent not to be follow'd; indeed, 'tis a Reproach to the House to mention it, since no Parliament hath reversed it. As to the other Action against the Sergeant, he says, Judgment was given against him, and that stands in full Force, as I remember that Case, it went off upon the Premises of Pleading.

But nothing of this kind being the Question now, I beg Leave to fire what the Action is that is now before us. For Gentlemen in the Country, who have frequently met with Actions, prosecuted without Consent for Matters relating to Elections, may, perhaps, be surpris'd, 'till they come to consider what the Point is. This is not an Action grounded upon any Statute whatsoever. 'Tis agreed an Action may be maintain'd where a Statute gives a particular Remedy, but this is an Action founded upon the Common Law. We waive your Privileges, as, if you will consent to an Act of Parliament to make other Persons Judges of those Privileges, so far as you consent, if they pursue the Power given them by Act of Parliament, there is no Wrong done to you: But an Action brought at Common Law is that which I think, imports with the inherent Right of this House.

We have, I think, arriv'd to one Piece of Knowledge upon this Debate, that that was the Will of the House that was ever brought to this Kind; and Gentlemen will not much wonder why this is brought now, when they consider what Endeavours have been used to make this House contemptible. I believe this may be thought the most probable Method to attain that End.

I would not repeat the Precedents that have been quoted, yet I can't but take Notice of that of *Hamersley and Sower*: Their Arguments

that were made use of for this Judgment in that Case were oppos'd, and the Judgment of the Lords was then contrary. I should be very glad to hear how the Lords Judgment of *Reverend* in that Case, and of others, are reconcilable. The Commons, at that Time, would scarce have look'd upon an Attempt upon their Privileges, and I hope we shall be as careful and as jealous to preserve ours: We have as much Power as our Predecessors, we shall never suffer for want of Power, if we do not suffer for want of Will to exert it.

I expect to hear of the great Authority of one learned Judge, that differ'd from the rest, I have the usual Reason for his dissent, but am sorry to hear any Information, that those Judges who have given their Opinion otherwise, are guilty of a Dishonour of their Orders. If such been touch'd upon, That whenever any Question is mov'd the Judges concerning the Privileges of the Lords, in the Power of the Commons, their Answer is extended for the Information of all our Representatives, and to the Honour of both Houses. I believe, That was a Matter above their Knowledge: The Law of Parliament is above the Judges of the Common Law, and is not to be subject to their Judgment, *(as said first)*.

And, Sir, as I have been inform'd, this was the Answer given in the House of Lords by one of the said Judges, and by a second I have heard, it was still to escape their Censure, they use a safe Reply to this House in very great Offices.

I beg Gentlemen to consider, (I shall not enter into Particulars that have been discuss'd) Which is any thing of this kind would not make you dissatisfied, to the lowest Degree in the World, and would incline you to such Measures that more could ensue? Upon every Motion that comes before you, 'tis impossible to judge the Right of Elections, but by the Right of the Elections. If you will endure any Person, after you have said he has no Right, to go into *Wyndesore-Hall*, and bring in Actions in the Courts there, a Jury may find a Verdict, in the House of Commons are mistaken, and that this Person has a Right, and Judgment shall be given accordingly. Will not that Proceeding, this very Moment, submit your Resolutions to the Examination and Censure of the inferior Courts? May not they say, They Vote for one another, we have deserv'd them all. That they are a Parcel of People pack'd together, and not one of them elected as they should be.

What Condition the Magistrate will be in, hath been mention'd already, when a Member hath a Right, and every body may bring his Action. Can any Magistrate (as a Constable, as in this Case) bear the Expenses of a hundred or a thousand Actions at Law? There will not be wanting Cause to prosecute a Magistrate with all the Violence possible.

That I can by no Means agree, That the Matter is to be determin'd according to the common Rules and Methods of Law, but according to the Course of Parliament; yet I shall compare it with some other Cases in the Law.

That which makes these Persons Hardships the greater is, These Magistrates are not People that officiously interpret to take a Poll at Elections, and make a Return; but those are Men, who by the Duty of their Office, are oblig'd to do it, and if they do not execute their Office, you punish them, and if they do execute their Office, and give true Informations, yet if you let them be examin'd at another Place, after you have said they have done well, they may be punish'd for doing so. I will compare this with one, or two common Cases that we have mention'd. Suppose a Person should exhibit an *Indictment* against a Justice of the Peace maliciously, he doeth it lawfully, and it is a well-consider'd thing, but if a Grand Jury-man find a Bill against a Justice, and the Justice will not admit an Assessor to do it. So it is in the Case of a Writ, because he is brought in by the Process of the Court. So it is in the Case of the Poll, and it is not equally the Duty of a Magistrate to interfere upon the Poll, and afterwards to make a Return: 'Tis not nearly so criminal, before you?

A great deal might be said further upon this, but I hope 'tis pretty unnecessary. And that nobody can have any doubt but that our Privileges are very much concern'd in this Question, and that the Consequences would be; therefore I would briefly propose for the Question what another Gentleman hath hinted at, which may reduce this Debate to a particular Point.

We certainly have such a thing as the Law and Custom of Parliament, and that is very well known; and upon that Point I desire you would put a Question to this Effect:

"That the sole Right of examining and determining all Matters relating to the Elections of Members to sit in Parliament, except in such Cases as are otherwise provided for by Act of Parliament, is in the House of Commons; and that neither the Qualifications of the Electors, nor the Right of the Persons elected, is otherwise cognizable, or determinable."

Members. The Question, the Question.

Mr. Smith. Sir, I speak only to your Order, That Gentlemen would not interrupt one another by calling for the Question, but give diligent Attention to the Debate, for this is a Matter of great Consequence.

Then Mr. Frowen (in the Chair) read a Question on his Paper to the Effect propos'd by Mr. Smith, and read the same to the Committee.

Sir Christopher Mordaunt. I am very willing to hear any Gentleman that will stand up and speak, and you have had a very good Hint given you by an honourable Person, that this is a Business of great Moment, and I hope we shall continue so do as we have done, that is, Sir, Gentlemen patiently, and that we may not be guilty of any Dilatation, I move you for Candies to be brought in.

Then the Question was put, and carried for Candies.

And they were brought in accordingly.

Mr. Dorrer (afterwards a Judge) Mr. Frowen, you have now a Question upon your Paper, but that which I take to be the Question, is,

"Whether a Freeholder, or a Freeman, who hath a Right to give his Vote for his Representatives in Parliament, may voluntarily and

"lawfully

is himself deprived of that Privilege, without any Redress in any Court whatsoever?"

Thus I take to be the Case before you; his said to be of great Consequence, and I do take it to be of great Consequence to any Thing that ever came before either House; and I don't look upon it only to concern the Justification of the Lords and Commons, but to affect every Part of the Constitution, and the Queen, the Head Church, in the highest Degree. For in coming to this, if the Lords have not a Right to determine in this Matter, which by Writ of Habeas is regularly brought before them, we shall be turned into a Service of Villagers, and the People will be deprived of choosing their own Representatives without Relief, and shall not have Relief by her Majesty in the Court of Queen's Bench, nor before her in the Court of Parliament, where, in Configuration of Law, she is always present, and here by our Law is the last Appeal; and there will be a Violation and an Interruption of Justice, and our Constitution is so related to ourselves, will be trifled with, that 'twill be impossible there should be any right Representation of the People. For 'twill not be the People then that will elect, but the Officer may arbitrarily refuse and return whom he thinks fit, and the particular Person will be without Remedy. For whatever Council you apprehend, if the Right of Return be not preserved, which we call our great old Man bring his Case before you? And whosoever should be his, it is not by Act of Parliament, but by the Law; (but I will turn the Argument, and put it upon them to show how I still believe that there was any particular Application to the Committee of Privileges, where the Injury has been done to a particular Man, which is the preface Case; And this Matter is found by a Jury to be true, and not one Man of the Jury but of Quakers, and approved on both Sides.) And I think, though it never came before the Parliament, nor the Committee of Privileges, they might consider of a particular Injury.

As I say for the Nation that both been taken up, That where the House of Commons have a Jurisdiction, there the Party is in all God's without Remedy, in any other Court. Now that is not according to Truth, for in the Case of a false Return, there is a public Injury, and that does not hinder the Party from obtaining Satisfaction in his particular Injury, and if no Action lies, there is no Satisfaction; for this House hath not awarded Damages in any Case, notwithstanding the Case could, for that would only Curb for the Man's Trouble in coming up to be examined before this House. And if this House awarded Damages, there is no Way of bringing that Damages. What Way can we offer out? And if that Person is not at Liberty at Law, he shall be done without any Redress whatsoever.

There may be a third Case of Cases where the House hath a Jurisdiction as far as concerns the Publick and themselves, and the Party shall have his Remedy.

If I receive a Blow in this House, 'tis a Violation of the Privilege of this House, and this House can take Just Allowance of it, and restore the Peace to that House; the Injury, but will any Man say, That an Action of Battery will not lie, the Common Law in that Case?

That was the Case of Sir Thomas Clarke. At the Time of his Election there was one Row upon Words to his Jurisdiction; he might certainly have complained to the House of it (yet had an Influence, I think, last Session, of one that could not be so honest but Injury against the Lord Bishop of Worcester, and the House sent into Committee, which Sir Thomas Clarke was to leave done, but he brought his Action, and to consider of several Damages, and afterwards a Writ of Habeas was brought in the King's Bench, and Judgment was affirmed.

There is a Case not without great Prejudice of your Law, and that is, where a Member returns, and he delivered this to a private Messenger to bring up to the Crown Office. The Messenger, by the Way, though he is to deliver the Return, and make another Return than what he received from the Sheriff. For this Action was brought, and he recovered at Law as much the Messenger for the private Damage he had done him. Certainly otherwise the Law would be defective.

In another Case, the Sheriff returned, as prejudicial to a Constitution, so a Corn Field, an Ashbur was brought against this Sheriff at Law for the Damages he had done the Constitution, and was maintained; and I don't say more Cases may be put: Which shews that you have a Jurisdiction as to what concerns the Publick, does not exclude the Party, but he may have his Action for his private Injury.

As yet in any Persons I have heard, which I do not to be true, particularly in you, That there is no Remedy at Law, but in Cases presented by the House only. That is not fit, that Statutes imply the contrary. The third Case, Whereas there was not a sufficient Remedy, therefore that gives a more complete Remedy, and to the Judges declared in the Case of *Barnes v. Ashby and Stone*.

So, they have told us of the Case of *Barnes v. Ashby and Stone*, and of *Newell and Stone*, with humble Submission to your Grace, I take as far as to power the Justification of the Lords, and the House of Commons, that in the Case of *Barnes v. Ashby and Stone*, was an Action tried before the Court of King's Bench, and a sort of a feared Judges never were before, or since, and three of them were of Opinion for the Action, and my Lord Chief Justice Hale was one of them, who, the Time before he surrendered his Character, did this express himself: "He says 'Tis due to God that he had not a better to this Time, that he was able to keep his Cuff and his Angles in that Place." But afterwards it had its Part, a Writ of Error was brought in the Exchequer, and Mr. Justice Leake, that reports it, says it appears, That that was argued against the Judgment in the *Kings Bench* was made fully, and they themselves afterwards determined the Case. And that was a Case how valuable it was at that Time, to have the Privilege of the House of Commons, and as English Parliament. Three Judges were in the majority, and as I think two in the Common Place. Any who it came into the House of Lords, and there the Reverend in the Exchequer was affirmed, for Reason different to what was argued now, and I believe for several good Reasons. The Sheriff in that Case did make a double Return, and the Sheriff might do it for his own Indemnity, for it was no more than taking a special Ver-

dikt; and therefore the Saying, *sed et malitiam*, being put to a Thing that was in itself right, would not alter the Nature of the Thing. Another Reason they went upon was, they said this double Return was a writ Return, and for that Reason the Action did not lie; and upon those Reasons depended that Judgment. That Gentleman who said that only four or five Lord Judges, and under a great Majority four or five Lords only believe entered their Dissent, but there was a great Number, and near an Equality, gave their Judgment, and I don't see Lords now in that House were against that Judgment, that did not enter their Dissent.

Then, Sir, there is the Case of *Newell and Stone*; and that was first a Judgment in the Common Place, and when it had taken its Progress in *Windsor-Hall*, it came before the House of Lords, and the Lord returned it back again to *Windsor-Hall*, and entered all the Judges of England to give their Opinion in it. That was found it upon an Ordinance of those Times, *Resolves* was to send one Rayner, and *Newell* was one of them that were elected, but not in turn: I take this fact, in that Case that Ordinance was entirely neglected, that Case did not proceed itself by the known Laws of the Land, and for that Reason it would not give Judge any, for Vices could not be taken before than King's Bench, and when afterwards they were to give Judgment, the Court of Common Pleas had recourse to itself.

Now, as to the Lords Right to receive a Writ of Error in this Case. You have added to them that they would receive a Writ of Error at a Time when your Privileges were invaded. That would Cut off my Lord Hale, who with others was obtained against, 5 Cor. in *King's Bench* Words in this House that did affect the Government, and he added to the Justification of the Court (I have not such Thing here). No, they have submitted to it), and the Court over-ruled their Petition to the Justification, and that Judgment continued in Force for many years which have been since done, which it were well if they were not, and the House took Notice of it, and in 1687, they desired a Conference with the House of Lords. The Chairman was my Lord Chief Justice Popham, and the House there complained how they were grieved by that Judgment, and after several *resolutions*, both Houses did consent to this Expedient, that my Lord Hale bring the other Scrivener, he did be desired to bring a Writ in Error in the House of Lords, and I had to do, and the Lords in that Case did give Judgment, and reversed the Judgment.

As to your saying this Year, when will I send, I cannot tell. That signifies a Vote you shall better about the Year Eight, That the putting the Laws in Execution against Persons at Disobedience, was an Injury to the Publick, and I do believe in the Government, and that those that put them in Execution it should be looked upon as Enemies to the King and Kingdom. The Government says, That all the Laws against Papers were put in Execution against *Presidents*, since then they were in force. The Judges in *Windsor-Hall* said, This Vote had not passed since a Law, and they could not take Notice of it. I hope we shall do nothing that will offend ourselves, nor say I think but what will be beneficial for the Ends for which 'tis provided.

So, *Jacob Young* (parliamentary Member of the Reel), Mr. Freeman, I consider you have to be a long Time in the Debate, and a great deal of business in you, either as a Member or as a Judge, so that you are before you, as a Judge, I do think that the House of Commons, and that those that put them in Execution it should be looked upon as Enemies to the King and Kingdom.

The Chairman hath a Copy of the Proceedings of this Action referred to the House, and he hath read it, and an *affirmation* in it, but, and had been answered by my Lord, and they would have had the Lords, in the Judgment they gave, did any Thing as Opposition to your Judgment, or in Denial of your Privileges.

Before the Action was brought, there was a Resolution of the House of Commons, That the Right of Election for the Borough of *Spalding*, was in the Inhabitants not exceeding Alms. 'Tis true that Resolution to the Plaintiff hath taken his Part, and has brought his Action, for by this Declaration he makes his Case to be, that he was an Inhabitant of that Borough, not exceeding Alms; and that the Constables fairly and lawfully abstracted and hindered him from giving his Vote at the Election there. The Constables plead, Not Guilty, and the Matter goes to a Jury, and they find for the Plaintiff, and give him five Pounds Damages. Which is in effect a finding that the Plaintiff was an Inhabitant, not exceeding Alms, and that he was abstracted and hindered from Voting by these Constables, and that was done *sed et in re ipsa*, and to his Damage. And this was so to demonstrate, that the Proceeding at Law has not been in Opposition, but in Conformity to your Judgment.

Now I am to consider, whether the bringing of this Action is a Violation of your Privileges? Against many things have been said not proper for us to deliberate upon, one, that this will encourage a Multitude of Suits; another, that this Action was never brought before; and several other Matters which you are to Question, whether this Action will lie. Now that is not the Question here, but the true and only Question before you is, Whether this Action was brought in violation of your Privileges? And there be no Breach of Privilege in it, I know of no Authority we have to stop the Course of legal Proceedings.

And as to that, but one thing (as I conceive) has been said materially, which is this, That this is a Parliamentary Case, and appertains to your Jurisdiction, and the Judges of the Common Law are not Judges of the Law of Parliament, and therefore they ought not to have given the Plaintiff his Judgment (and it must be admitted the Lords ought not to have given any Judgment but what the Judges ought to have given). To maintain this, it hath been said, and understood it is true, that this House hath a Right to judge of Elections; and it is as true, that in order to cause no such Determination, it is necessarily that the House do judge of the Right of Election, and it has been so, (but that I deny) that the Right of the Electors is by the Law of Parliament.

I take the Right of every Elector in England to accrue to him by the Common Law, for he is under use of other of these Qualifications: *Editor*

Either he is a Freeholder, and then he has a Right to vote for Knights of the Shire; or he has a Right by Charter, or a Right by Prescription, which both have Right in the Right of voting in all Cases and Boroughs. Now I would be glad to know, whether the Right of a Freeholder is distinct by the Common Law? Is it not an Estate, with all its Privileges and Services, created by the Law? Whether a Right by Charter is not by the Common Law? Is it not that Law that enables the Crown to grant Charters, and qualifies that Power? Whether a Right by Prescription is not by the Common Law? Is not Prescription, Common Law? And is the Common Law any Thing but Common Usage? So that the Right of every Member being by the Common Law, the Judgment is that Right is primarily and originally in the Courts of Law. The President's Right of voting, is of the Essence of his Freehold; and you may as well take away his Freehold, as take away his Right to vote, which he has by Virtue of that Freehold, and then tell him he must come to the House of Commons to recover it. And the same may be said of these several Injuries which give a Right of voting in Cities and Boroughs. And thus I hope I have made it out, that a Right of voting is not a Parliamentary Right, but an ordinary legal one, and the Common Law. Judges have the Judgment of it originally; and it is incidentally only that the House has a Power of judging of it, and that too according to the Rules of the Common Law; which is a further Demonstration that it is a Common-Law Right, for it would be absurd to say, a Man has a Right by our Law, which is to be judged by the Rules of another.

Then what Course has the Plaintiff taken? He has a Right by the Common Law to chafe Burdett for Arbitrary: That Right has been invaded, and he has gone to the Common Law for Redress, and from no other Power could he have it, for this House, or the Committee of Elections, cannot give a Remedy in this Case, that is, cannot make the Person injured Reparation for the Damages done him, by abridging him in the Exercise of his Privilege: And that is the Thing the learned Gentlemen, who have spoke in this Debate, have said by; and these are the material Points, that this is a Right at Common Law, and this House cannot apply a Remedy.

But it has been said, that the House will examine, not only on Behalf of the whole Nation, but of the Electors. This is true, but in order to what? To see whether you have a right Member here, and for no other End, for to challenge any Gentleman to these two are Instances of a single Man who came before and complained. That he had a Right to vote, and was hindered from voting, and made that Injury to be the Office of the Officer. Did the House, or would the House ever receive such a Complaint? And yet he may go with that Complaint to the Law, for whether the Person he would vote for be returned or not, the Injury is the hindering him from enjoying his Privilege: And it cannot be made an Injury, or not an Injury by Matter or fact, that is, by the Officer's returning, or not returning the Candidate. And tho' the Officer should repeat him, and not carry his Injustice so far as to make a false Return, yet it is of Use, that the Law will redress the Wrong done to the Voter, and thereby, perhaps, stop the first Steps or Approaches towards a false Return.

But if I should object the House would receive the single Petition of a Voter, who was refused, and when the Person he would have voted for was returned, yet the House cannot make him Reparation; all we can do, is to censure the Officer, but we cannot make the Person complaining whole, in Point of Damages. Indeed it has been said, the House can give Damages, and there was an Instance given of Mr. Vanebo, who complained against a Clergyman, and the House ordered Mr. Trenchard to pay him Costs: So was Sir George Megeat ordered to pay Costs to the Member he maliciously persecuted against*, and the case is presented for at the beginning of every Session. But with these Instances of any Person injured in Damages by this House? No, these are Instances against Petitioners, not in Favour of them; nor are Damages given in these Cases, but Costs; all that is provided for is, that Persons frivolously complained against shall not be out of Pocket. And by a Means you have a Jurisdiction in Point of Expenses, but not in Point of Damages, for you may order the Wrong-doer into Custody, and make his Payment of Costs to the injured Person the Price of his Liberty, but there is no direct Remedy even for Costs.

But it is apprehended, here may be a challenge of Jurisdiction, and if the Party should be allowed to go on, the Court of Law may be of any Opinion, and this House of necessity must follow the Court of Law does not allow of, and that is to suppose Cases of Justice will not do Right. It will be allowed to me your Determination will always be just, and other Courts the Law yourself will do right too, and then they will determine as you do; and your Determination, and that of the Law, as I said before, has been the same in this Case. But then, as the Supposition of Law is, that all Courts will do right, to human Frailty supposes there may be an Error in Judgment. And yet Courts must have Jurisdiction, or else there can be no Administration of Justice among Men, since there is no Jurisdiction but of another World that can proceed to an unerring Judgment.

And now I will show you where several Courts have different Jurisdictions of the same Fact, and the Law allows them notwithstanding there may be Diversity of Judgments. The Court of Common-Pleas may punish a Person for assaulting an Officer in the Execution of their Process, as a Contempt to that Court; but at the same Time, for the same Matter, the Offender may be punished in the King's Bench, as it is a

Breach of the Public Peace; and the Officer may, if he please, bring his Action in the Court of Exchequer for the Damages done him.

I would observe a little upon the Cases of this kind, and then it is possible. The first is that of *Neale and Smith*, I have I voted into the Journal of 1699, and the only Book of our Law where this Case is reported, and it is *Stargis's* second Report; and that was upon Writs issued out by *Crawford*, whereby he appointed Countess *Stargis* a Member of the Long Parliament, first for one of the five Knights for the County of *Berk*; they chose him, but he was not returned, and therefore he brought his Action in the Common-Pleas. That Action depended three years Time, and thereupon the Judges, since the Rise of this House for Difficulty, and defend the House was to come to a Determination in it, laid by the Way there was no House of Lords to bring it to the Trial, for it was in the Time of the Long Parliament, who had shared the whole Legislature, as well as the Law itself (Power) and so under the Judges comprehended upon with the Determination of this Question, since they were then *Co-Judges*, and had their Law notions from them. Well, but the Record being brought in, the Court, appointed a Day to consider of the Matter, and when they saw the Record had proceeded according to the known Methods of Law, they gave no Judgment upon it, but sent it back to *Wyndham-Hall*, and there it was again argued, but never adjudged. And that there was no Judgment given, is easy to account for, if the Judges thought such an Action would lie; for, at that Time, the Long Parliament was upon the point of bringing in the *Bill*, and restoring the *Lords*: And if they had given a Judgment for the Plaintiff, they had given a Sanction to the highest Usurpation of the Protection, and all his wild Fancies of changing the Constitution at his Will and Pleasure. And indeed the Plaintiff had disowned the Authority of the Long Parliament, which he had with great Zeal affirmed, and of which he was himself a Member. But if the Judges had thought such an Action would not lie, they might, who any Scruple, have given Judgment for the Defendant. And this seems to me a strong Authority that *Wyndham-Hall* thought such an Action would lie: And it is very remarkable, that when that House of Commons (as they called themselves) had assumed the exorbitant Power I mentioned before, they did not proceed to assume the Jurisdiction of the Common Law.

The next Case is that of *Saunders and Barnardine*, in which the *Commons* divided. My Lord *Chief-Justice* was of one Opinion, and my Lord *Chief-Justice* of another, and there were *Six* and *Six* of a Side, and the Matter came by Writ of Error into the House of Lords, and a Gentleman said, *Good* was worth considering for. But I am apt to think Sir *Saunders Barnardine* did not hope to recover one Farthing of the Money, for *Saunders* was dead, and I believe without Affairs: For, in all the Proceedings in the House of Lords, none appeared on the Behalf of Sir *Widow*, he had no Counsel there; but it was agreed against Sir *Saunders Barnardine*, by Mr. *Attorney*, the late Lord *Chief-Justice*, so vindicate the Proceedings of the Exchequer-Chamber, and Judgment was given, as hath been said, in the House of Lords.

But what I have supposed next? The Commons were so unsafe under that Jurisdiction, and the Injury which might be done to the People from whom they derived their Authority, by double, or false Returns, that the next Thing was the Interposition of the Legislature to apply a Remedy, and the Lords came into it, though it was a great Discrepancy to the Reverential of that Judgment; for the Act of the year of the late King, declares false Returns to be against Law, and provides an Action shall lie where an Officer makes a Return false and maliciously; yet never thought that an infamous Thing, but knew Malice might be tried in that, as well as in many other Cases: And I wonder to hear *just* to *Wyndham* should be so much the Rule of Courts. Men are tried for their Lives every Day, when Malice is the main Point in Issue. If a Man dies without any Prosecution all another, the Law intends, that he is to die to Murder. So here, if an Officer is such the Vote of one, who hath a clear and indisputable Right, the Law presumes it done maliciously; and if the Officer refuse a Man's Vote, and there is any probable Cause or Colour to do it, or his Right of voting is doubtful, the Judge will tell the Jury they ought to find for the Defendant; and therefore it is only in a plain and plain Case that a Man can prevail in such an Action. And thus, by the way, is an Answer to that Objection, that such Actions as these will bring all your Elections to be determined by the Lords. Since an Officer can never be forced guilty by a Jury upon such Actions, where there is a Controversy or Dispute, much less can the Lords try or determine any thing of the Right.

There is another Case, and that is the Case of Mr. *Ogborne* against the Bailiff of *Hatcham*, that Judgment was against the Action, and was given by my Lord *Chief-Justice* North, and the rest of the Judges of the Common-Pleas, upon the Authority of the Judgment in the Case of *Saunders and Barnardine* in the Exchequer-Chamber; and no wonder they would not give a Judgment contrary to what some of themselves had given in another Place.

Sir, this Question hath been before this House but long since. Whether a Candidate should be hindered from proceeding upon an Action at Law before he had come to this House (in these Determinations, when should he be chosen or no? And this House, upon a solemn Debate, adjudged, that he might go to Law before he had come hither; and I desire your Clerk may read a Word or two in your Journal, viz. *Monday, March 13, 68*.

Clark reads. "The House being acquainted, that *John Baker*, Esq.

* The CASE of Sir George Megeat. At New, 2 *October* R. A Complaint being made to the House, that Sir George Megeat had professed at Law several Fees in favour of the House, and that he had sold the Office of the Committee of Privileges and Elections, upon hearing the Matter touching the Election for the Borough of *St. Dunstons*, it was ordered, that the Clerk should be desired to examine the Matter, and report thereon to the House.

† At the House of Commons, a Resolution was made of the Matter of Fact, and that the Commons should support their Complaint, and that the House should be desired to examine the Matter, and report thereon to the House.

‡ *Lords*, 2 *March* 1699, and *John*, for what they related of the Committee of Privileges and Elections the last Session, upon hearing of the Matter touching the Election for the Borough of *St. Dunstons*, it was ordered, that the Clerk should be desired to examine the Matter, and report thereon to the House.

§ The House then agreed with the Committee, and ordered Sir George Megeat to be taken into Custody of the Sergeant at Arms.

¶ The CASE of Mr. Trenchard, 30 *Nov.* 2 *October* R. Mr. Trenchard complained in the House of a Breach of Privilege against Mr. *James* *Megeat*, Minister of *St. Dunstons*, who had sold the Office of the Committee of Privileges and Elections, and that he had sold the Office of the Committee of Privileges and Elections, upon hearing the Matter touching the Election for the Borough of *St. Dunstons*, it was ordered, that the Clerk should be desired to examine the Matter, and report thereon to the House.

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who was Candidate at the Election for Chief of Members to serve as the present Parliament for the Borough of Leicestershire in the County of Leicestershire, hath brought an Action upon the Statute made in the year of our Majesty's reign, against Mr. Richard R. in the Mayor of the said Borough, for the sum of 500*l*. for making a false Return of William Bridges, Esq. although the said Mr. Bridges never petitioned against, or questioned the said Return in this House, and a Declaration arising thereupon, relating, That the Debate be adjourned till Wednesday Morning next.

Sir Joseph Jekyll. Now I desire you to look upon Wednesday the 13th Day of March, when this Debate was refused.

Clark read. This was the 13th of March. The House refused the adjourn'd Debate relating to Mr. Bridges; and after a long Debate, the same fell, without any thing done thereupon.

Members. Well, what then?

Sir Joseph Jekyll. I take this to be a plain Authority, that will govern the Cafe before you; for if it was not reasonable to refuse a Mass from proceeding at Law upon the Statute, before he had come hither for a Determination, when it was to be continued to the next Election, which was undoubtedly proper for the Jurisdiction of the House, much less will it be reasonable to refuse a Proceeding at Law which is not to concern the Election, and upon a Cafe not proper to the Jurisdiction of the House; and the House doing nothing upon that Complaint, is a Declaration, that the House could not justly do any thing upon it: For if a Man makes a Motion in any other Court, and the Court declares they will do nothing upon it, I desire to know whether that be not a Declaration of that Court, that the Motion is unreasonable, and it is all the Judgment the Court gives in such a Cafe. And I had the Honour to sit in Parliament when that Motion was made, and very much surprised; and some that have spoke in this Debate were men of an Opinion contrary to what they are now, and were not for stopping the Course of Law.

Sir. I apprehend the Action is well founded on the Cafe; this Man had a Right to vote, he had an Injury done him in respect to that Right, he hath sought to be repair'd in a proper Way, and he could not be repair'd in any other: I am for doing nothing to his Prejudice, and therefore an answer your Question.

Mr. Horley (speaks). Sir, I shall trouble you but with a few Words after this long Debate: And rather to understand the Terms you are debating on, than to think any Thing I can offer to be of any great Service. But since the Question is not to be as some have represented it, but to be simply this in general, Whether an Action does lie as Common Law in the Cafe before you?

There is no need to mention the particular Circumstances of *Ashby* Election, for if that was the single Cafe, you might have taken another Method. I will not insist, that in this very Election a great Number of those Inhabitants petitioned this House upon this Point, That their Votes were deny'd: And after this Petition had lain in the House some Time, it was withdrawn by their own Consent: I do not trouble myself whether that particular Mass was enough then, nor will I trouble you with what may reasonably be urged from this, but leave that to other Gentlemen.

But I desire we may understand the Terms upon which we are debating, we have had Maxims of the Common Law, and the Rights of Parliament mention'd. The Common Law is the Common Usage of the Realm; I take the Laws of Parliament to be the Common Usage of the Lords, and the Usage of Parliament to be the Law of Parliament; and the Law of Parliament is to be known by Usage, as the Common Law is.

Then how shall we know whether this belongs to the Common Law? If there be any other Way, I should be glad to be inform'd; but I think there is no other Way of knowing whether an Action will lie as Common Law, but by Reason or Usage, and Precedents. Now, if by Reason, it is to be made out by what necessarily attends the Cafe, or some other Cafe like it. And just what do they offer, that lie at Common Law? Do they give you any Precedent? What Reason do they offer? I suppose that which was read last is no Precedent in this Cafe, for that was an Action upon the Statute; or that the Courts below take upon that a Legislative assent of a Judge, which must be, if there be no Rule for them to go by. I take the Question you have read to consist of Two Parts, one asserting your own Right; the other is negative, That no other Courts have any Right, but in Cases particularly directed by the Statute.

I cannot think this of Election and Election a Privilege; I take it to be a Service both in the Election and Election, and so formerly was reckon'd an hard Service; I leave not how they find it now. 'Tis a Privilege, I take it, because all who are Electors are liable to pay the whole of the Cafe like it. And just what do they offer, that lie at Common Law? Do they give you any Precedent? What Reason do they offer? I suppose that which was read last is no Precedent in this Cafe, for that was an Action upon the Statute; or that the Courts below take upon that a Legislative assent of a Judge, which must be, if there be no Rule for them to go by. I take the Question you have read to consist of Two Parts, one asserting your own Right; the other is negative, That no other Courts have any Right, but in Cases particularly directed by the Statute.

Then consider, this House is in Possession of this Power, as of Right; and I do not find the Common Law in Possession of any such Right. Then what do they offer to bring it in, but that there would be some Failure of Justice? Now I took it, That the Judges are *pro domo*, and not *pro domo*: If any thing was a Provision to be made for it, it must be done by the Legislative Power, and if the Election was not, Provision must be made for them, that they shall have an Action, and those Gentlemen who think that necessary, may bring in a Bill to that Purpose, and take the Sense of the Legislature upon it in a regular Way.

The Question before you now is, Whether the Examination, Hearing, and Determination of all Matters relating to Elections, where some Statute have not particularly directed otherwise, does not belong to this House? There was a famous Cafe of *Gower*, that was a Cafe contested by the Crown, and the Crown pretended to find out another Writ. And there they say, That as to Members of Parliament, their Attendance, &c. they are the sole Judge. And this they say before Vos. VIII.

King James in the first Year of his Reign, and claim it as their sole Right, and the King's second Writ was determin'd to be void.

But a Gentleman makes an Argument, if one should fight another in the House, what Remedy? Why there is an Act made for that Cafe in Henry VI's Time.

I think now the Matter will turn upon this: Say they, 'tis true you can try Elections, and who are the Electors; but there is one Thing remaining, that is, to give Satisfaction. Have they any Precedents for this? I believe the Precedents are without; they have a Power for what is necessary, nothing less than a Law can give the other.

Gentlemen say, there may be a Difference in Judgement in Courts below, but that an arbitrator, and three lies an Appeal: But in this Cafe, all Courts will be co-ordinate with you; and therefore, if that be a Grievance, it is a Grievance in Government, prevent it now.

'Tis said, Will you will your Vote do? That is pretty odd: If they would have an Act of Parliament, your Vote must be the Ground of it.

You are Judges of the whole; but far more, you can't give the present Satisfaction. Well, suppose so; but you can refuse all the present Satisfaction. But let me say, if you would not let up a co-ordinate Power with you in Matters of Election, and which will be a hard for you at all, I hope it will be a Warning to you, to take more Care in the judging of your Elections for the time to come.

If the Judgment belongs to you, and you are possess'd of it for so long a Term of Time, that nobody can offer any Thing against it since H. IV's Time; 'till Gentlemen show me some Reason, why the Common Law should lay hold of it, I must be of Opinion that it does belong to you, and so Court can take Cognizance of it but you, except where 'tis otherwise provided for by Statute.

Sir Thomas Alder. Sir, I shall not enter into a Dispute, and repeat what I remember of former Times; I will say but this, let others answer it better if they can: As to the Words *scilicet* *et* *maindre*, it seems one Chief-Justice said, They were Words of Importance, and must be prov'd: Another Chief-Justice said, They were only Words of Course, that is, like Pepper and Vinegar to a Slice of roast Beef; for there is one Chief-Justice, that spoke last but one, against another.

As to making Satisfaction, I confess, I live very well what that Gentlemen said on the right hand. If there was any Precedent for it, I agree it would do very well, that this House could give Damages, and we will make the best of it; but most of these Things have Spoke in them, and these Actions are brought with Spite. Now this we can do, we can punish the Offender, and there is Revenge in that, and that is a sweet Bit, and some Satisfaction. What further occurs to me has been spoken by other Gentlemen, better than I can do it; and I shall not repeat it, being to late in the Night.

Mr. Cooper (afterwards Earl of Cooper). I perfectly agree with that honorable and learned Gentleman that spoke last but one in this Debate, in what he had said as an undoubted Maxom, or Ground-work, for the Opinion he deliver'd, That the Law and Customs of Parliament are Part of the Law of the Land, and as such, ought to be taken Notice of by all Persons. And I think 'tis the exact Standard by which we ought to walk; and the Decision my poor Judgement is apt to make from that Principle, is this, that we ought not, out of Zeal to our own Justification, to go one Step further than that known Law and Customs of Parliament will warrant us to do.

Now I take it upon this Debate, that this Law and Customs of Parliament doth not give the Subject, who is injur'd by his Vote being deny'd him, any Satisfaction or Recompense for that Damage: And on the other confirm'd in that Opinion, because that very learned and honorable Gentleman, who is particularly knowing in the Laws and Precedents of Parliament, has not pleas'd to refer to you any one Precedent, where the Subject is injur'd by such complaint to the Parliament, and had Redress in that Particular; but all Persons have been either from the Causes, or Elections, complaining of an undue Return. So that as to that Part, that it hath been by Law and Customs of Parliament to give that Remedy or Relief in Parliament, which is the Subject's Money, or End of Action now in question.

I go likewise along with him, and every Gentleman that hath spoke in this Debate, That by the Law and Customs of Parliament, none but yourselves can determine who are rightly elected, in order to displace, or place them here; and incident to that End, you have the sole Right of considering the Right of the Electors; I say so far forth, as it is necessarily incident to determine who shall, and who shall not sit here; and so other Court can consider the Right of the Electors, in order to determine the Right of any to sit in this Place, further than you by force of Act of Parliament have given them Leave. But this Matter has now long been disputed a great while, you have had it fully represented to you, how they come to hold the Scales in this Action in *Wentworth's* Case, it is as in a Cafe where the Right of Election, or the Privilege of this House was a Subject-matter of the Question; the Action was brought there only to maintain the injur'd Subject to Damages. And this Matter ought to be consider'd, as it relates to different Ends and Purposes, and upon that it turn'd in the Cafe of *Strom* and *Shewalden*. They who thought that Action lay, thought the Courts below might try the Issues of an Election to repair in Damages, not to determine who should be admitted to sit in Parliament.

And I will venture to say, That the Judgment of the House of Lords that confirm'd that Reverend, was in no wise at that Time satisfactory to the Commons of England.

But the Act of Parliament that hath been mention'd, was built upon this, that the Reverend of the Judgement between *Barnardiston* and *Strom* was not right, and so that Act was pass'd to set up the Right of the Commons of England, that was thought to be invaded by that Reverend, or Judgment, that the Action upon the Cafe did not lie.

I will go a Step further, That as you have the sole Power to try the Right of Election, and consider the Right of the Electors, to the End I mention'd, to determine who shall be admitted here; I agree it hath been the Law and Customs of Parliaments (how ancient I will not enquire) to punish the Offenders, particularly the Officers and Managers presiding at the Election, for doing any Wrong or Injury to his

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Office on that Occasion, in order to make him an Example, or as an Offender against the Publick, and the Constitution of Parliament: So far I grant you have a full Right to go, and nobody ought to interfere with you.

But now were carrying the Matter yet further: The Question now is not, Whether we have the full Right to punish the Officer as a publick Offender? This Action is not brought to that End, nor is there a Word in the Declaration, who was, or was not duly elected, or that the Constitution or Privilege of Parliament was violated: But the Plaintiff only says, he had a Right to vote, and that he was injuredly denied it, (whether the right or wrong Member was refused, he decides not with us) and he submits it to the Court and the Law. Whether he ought not to have Damages for that Wrong? And the Question now is, Whether that Demand of Damages was not well founded? Or, Whether there is any thing in this contrary to the Law and Constitution of Parliament? Law depending on Custom, certainly consists not in, and is not to be made out by one Act, but by often reiterated Acts: And that must be very far from being the Law and Custom of Parliament, which is so far from being a frequent Repetition of Acts, or Precedents, that in this Case, there is no Influence where an Elector hath brought his Petition, without regard to the Return made, and defired his particular Right to vote might be used and asserted, he having been obstructed and injured in giving his Vote: nor was any such Elector repaid his Damages here, nor ever had his particular Right to vote restored, or altered by any Judgment, or Declaration of this House.

The largest and honorable Person, upon whose Reasoning I am hereby offering my Thoughts, with great Defence, was pleased to insinuate in the Case of *five Persons in the Town of Aylesbury*, who exhibited a Petition, and complain'd of an Injury done them at an Election for that Town, at which their Votes were refus'd. And if they complain'd of nothing further, and did not conclude to the Right of the Return, and complain that they were unduly represented, I admit it had been so far an Inducement to his Purpose. But if they had in complain'd only of the Injury done the Petitioners in denying their Votes; yet he is pleas'd to tell you, this Petition was withdrawn, and by the Consent of the Persons who presented it, and to come to nothing. I suppose this is the single Precedent to prove the Law and Custom of Parliament, because there is no other Influence given. It does not appear upon what Ground or Reasons it was withdrawn, and I having no particular Memory of that Passage, you will pardon me, if I am mistaken in my Conjecture. I believe so Man, that seeks a Remedy would desist, if he expected to succeed; so I take the most probable Reason (till another appear) to be, that they were hopeless of doing any good with it: And one Petition not prosecuted, will hardly shew, that Parliaments used to give Redress in such Cases. Now if that Precedent had been successful, if the Petition had been referred to a Committee, if Damages had been given upon the Complaint, and a declarative Voice had call'd to assert the Petitioner's Right, (but I did not observe there were any such Proceedings) then, indeed, I would admit, that it was one Precedent on Power, and a very material one, and it would have proved, that we had once held Plea of this Matter, and by consequence, if we had often done so, that nobody else had to do with it. But if that Precedent be defective, and none can shew that ever any Petition was exhibited by any Elector for a personal Injury done him in rejecting his Vote, tho' the Person he would have voted for was return'd, this Action may lie for such an Injury done to an Elector, without interfering with any Law, or Usage of Parliament, that hath yet been made evident; and that brings me to another Matter of this respectable Person's Discourse, and I acknowledge he enter'd into it with a great deal of Candour and Justice.

He was pleas'd to say, He thought it was admitted in this Debate, That the like Action is not to be found in all the Reports, or Books of Law. I would allow his Objections its due Weight, and admit what I take his Meaning to be, That this Action, in the particular Species of it, may be new, tho' 'tis old in its Genus, or the principal Materials on which it is built; and I take it, if by the general Rule, or Reason of Law for such an Action it be warranted, this Action (as a Thousand other Actions on the Case may) will lie, tho' in all the Parts 'tis not to be exactly parallel'd; for it is the very Nature of, and imply'd in the Name of an Action upon the Case, that every Man may maintain it on his particular Case, provided it carry in it the general Reason, or Inequity required by Law to support such an Action, tho' in many Circumstances it may be perfectly new. I for that honorable Person understands clearly the necessary Incidents of such an Action; and there, there are to be observ'd 'tis injury, which I take to mean a Damage to the Subject, not arising from a lawful, but which is the Consequence of an unlawful Act. Now, says he, first, here is no Damage, because anently the Attendance was thought a Service and a Burden, and the Right of Election was a Service too, and in being deprived of a Service, there can be no Damage; and therefore one of the main Ingredients of an Action of the Case is wanting. This is clear Reasoning, and either to be allow'd or submitted to.

It is said, The Right of Election was a Service; how true, I doubt upon the Reason of the Thing: A Service was often part of the Tenure, by which a Man held his Land 'till it came up to the Crown; and the Service was originally created by Grant and Reservation. Now, can any one imagine, that where one holds a small Freehold, any such Tenure was created between him and his immediate Lord originally by Reservation, as that he should owe to send Members to Parliament?

But if it might be consider'd as a Service for created, it will not do the Business of the Argument, unless you consider it also as a Service of Burden, without Advantage or Privilege; for if it be a Privilege too, (tho' 'tis an Creation it might be a Service) then the depriving a Man of it is an Injury. Now nobody can think but that the Right to elect a Parliament-Man, which is a distinguishing Character from the Vulgar, and hath its Weight in the Legislature, is a Privilege; and therefore to be deprived of it, is to be deprived not only of a Service and Burden, but of a very valuable Privilege: And I believe any Englishman would think we dealt hardly by him, to deprive him of it, tho' we should tell

him, at the same Time, we depriv'd him only of a Service or Burden, and not of a valuable Privilege.

There is another Thing that occurs on this Head: We have been so far from thinking the being elected a Service or Burden only, that in the Nature of a Repeal of those Judgments of *Senior and Barnardiston*, by a positive Law we have given the Elected double Damages if he be deprived of that Service. Therefore by our own Notion, and in our own Case, 'tis a Privilege that ought to be recompens'd even with double Damages, that is so far, when it concerns ourselves. And shall we declare it a mere Service in the Case of our Electors, not to be recompens'd even by single Damages, and that after the unaltered Methods of the Common Law have adjudg'd in their Due? For I do not find any body doubts, whether this Man has proceeded in the legal Method throughout, even in the last Report. The Lords have not judg'd the Fact, they are bound as to the Fact by the Verdict, and they are unquestionably the Judges of the Law on a Writ of Error. And therefore, as to what hath been said, That any Fault of an Election might come to be determined before the Lords, it is a great Mistake, for they judge purely of the Law on Writs of Error, as every one knows, that knows any thing of our Constitution. Give me Leave to say, We upon this Occasion, judge of this Matter only as a Matter of Law, which may affect our Privileges; and 'tis we have Authority to consider what it is Law, as it relates to, or may interfere upon our Privileges; nobody that sits here can think that there lies an Appeal in this Place, or a second Consideration of this Matter after the Lords Judgment, as 'tis a Point of Law only, and as it regards the Right of the Subject: but that an Objection in Point of Law here to the Judgment of the Lords, will not hold otherwise than as it relates to our own Privileges; for nobody will say, That we are the dernier Resort in any other Respect. And tho' that is the only Point that brings it properly under our Consideration, yet I fear we are asking from the Subject, in Effect, what the Law hath adjudg'd his Right, and treating a legal Judgment given in the Subject's Favour. There are other Arguments along in, to make up the Weight only, as that which concerns the person in the Case of a Deceit, in which Case, in regard of the Multitude of Actions that would follow, an Action will not be every one that is injured by the ending of it. It is true, where a Multitude are injured by one and the same Fact, it shall not be punish'd by a Multitude of Actions, but the Public is to take Care of it, because the Injury is of a publick Nature. But by the same Standard and known Laws of England, if one Man is so calld as to commit a Multitude of Injuries, which severally affect several Persons, it was never said, that he became punishable by the Multitude of his Offences, but every one injured has his Action against him. I have heard it said, *despite Numbers*; but that is spoken as to the Number of Offences, not the Number of Offences committed by the same Man. And this Injury which could in denying the Subject to vote, when of Right he ought, will not be multiply'd (as is objected) by letting the Subject know, that as they may come into Parliament to punish the Officer as a publick Offender against the Constitution; for the particular Person injur'd, by being deny'd his Vote, may also have an Action for the private and particular Injury done to him only.

I would mention one Thing more: They who have spoke for the other Opinion, seem to take it for granted, (which I do not take to be a true Way of Reasoning) that because in determining who have a Right to sit here, we do incidentally, and only as, in order to that End, determine who have a Right to vote, therefore no other Judicator can try the same Matter or Right to vote, tho' it be to different Ends and Purposes.

Now if you will consider the different Jurisdictions in the Constitution of this Kingdom, there is nothing more common, and many Influences may be given of it. There are Variety of Jurisdictions that try the same Fact, and yet each hath a sole and separate Jurisdiction in that Matter, to different Ends; and these Jurisdictions are not, in that Respect, subordinate to one another: Takes the Spiritual and Temporal; the Spiritual is not subordinate, but only refrainable by the Temporal, where they interpose upon the Temporal; as in the common Instance of Marriage, which directly and abstracted from other Purposes, is triable in the Spiritual Court, and no where else: But yet if that comes to be a Question of Fact in relation to a Title at Law, or to make out a Defect, why the Temporal Courts every Day try it, though *per se*, and taken by itself, it belongs to the Jurisdiction of the Spiritual Court; and yet their Courts are not that respect subordinate one to another.

So in the Case touch'd upon of a Battery, 'tis not triable in the Common Pleas, as 'tis an Offence against the publick Peace, by Indictment, in order to a Fine, but triable in those Courts only that have a Criminal Jurisdiction; but as 'tis a private Injury, and in order to recompense the injury'd in Damages, that is triable in the Court of Common Pleas, and other Places, which have Cognizance of Civil Actions only: And this is not in respect that one Court is subordinate to the other, but one holds Plea of the same Fact, in order to one End; and the other in order to another End: And there is no eliding of Jurisdictions in such Cases.

Another which hath been objected, That this may create Variety of Judgments concerning the same Right: This does not weigh, it forms in our own Cases, for we may bring our Actions for double Damages for a false Return, and yet that may produce the same Variety of Judgments. So was the Opinion of the House in the Case behind me cited; and the Law is plain, That though the last Determination of this House, where there hath been any, shall determine the Right of Election, and there the Judges and Jury shall be bound by the last Determination, and to act by the same Rule; yet in Towns where there has been no Dispute of the Right sentle here one Way or other, the Candidate may notwithstanding bring his Action, and lie, or the People of the Place, may also petition the House of Commons. And then there is the same Objection, for there may be Variety of Judgments touching the Right of Election, one in the House of Commons, and another

another in the Courts below. And upon the Trial, in order to obtain Damages, a Jury, in such Cases, where the Right had never been settled in Parliament before the Election in Question, are not directed by the Judgment of your House on the same disputed Election, nor is any Jury bound to follow such Judgment. And if you will give up a Supposition, that a Judge and Jury may go contrary to Law and Right, or the Determinations of this House in the Cafe before you, 'tis an Objection which you have overlooked in your own Cases; and therefore why should it be an Objection to hinder the Person whom you represent, of his Remedy for the Injury done him?

Upon the Whole, I am for so much of your Question as serves only to declare, That you have the sole Power of determining the Right of all Elections, and even the Election Right to vote, so the End to try who is your Member, or to punish the Officer, as an Offender against the Constitution: as far as is agreeable to the constant Law and Practice of Parliament. But for that Part of the Question which relates to the returning the Election from bringing their Actions for the persons, or private Damage done to them, I think it is not agreeable to the Law or Constitution of Parliament.

Sir Humphrey Boscawen, Mr. Freeman, we are much obliged to the Gentlemen that have acted on both Sides, who have brought the Matter of this Debate into a narrow Compass: The Question is then, "Whether an Elector be intitled to an Action at Common Law against the Officer for Recovery of Damages, in case his Vote, which he offered, be not taken down in Writing, and entered on the Poll?" or, Whether the House of Commons have the sole Privilege of examining and determining the Right, or Qualification of every Elector to give his Vote, and in judging of the Behaviour of every Sheriff, and other Officers, in taking the Poll on the Elections of Members to serve in Parliament?"

I am of Opinion, with great Submission to better Judgments, that the House of Commons have a sole Right of Jurisdiction in these Cases, and that the Elector is not intitled to an Action at Common Law. I shall endeavour to support this Opinion, by answering the Arguments that have been made use of to prove the contrary: And first, I crave Leave to observe, That the Gentlemen who have argued on the other Side, have not taken Notice of a Distinction which forms to be very material in this Cafe, and that is, between an actual Force, or Violence done by the Officer, and a bare Omission in Point of Duty.

In case the Officer does by Force or Violence, abstract or bare, as an Elector from offering, or pronouncing his Vote at an Election for which the Candidates he pleases, the Elector will be intitled to an Action at Common Law for Recovery of Damages, for that is a Personal Wrong, and does not concern the Right or Qualification of an Elector to vote in Elections: But in case the Officer does permit the Elector quietly to offer, or pronounce his Vote, (as he did in the Cafe of Ashby, who pronounced his Vote for Sir Thomas Lee and Simon Mordaunt, Esq.) but does not think fit to enter his Vote upon the Poll, the Elector in this Cafe is not intitled to an Action at Common Law for Recovery of Damages, because he has neither suffered any Force or Violence, nor is by such Omission deprived of his Vote. For a Vote being once pronounced, the Law takes it for the Benefit of the Publick, tho' the Officer be wanting in his Duty, and none have Power to determine, whether the Elector had a legal Vote, and whether the Officer had sufficient Reason to refuse to enter the said Vote on the Poll, but the House of Commons. If any others should have Authority in this Cafe, they will be able to destroy the Freedom of Elections, and the Constitution of Parliament.

It is insisted by some Gentlemen, that the Electors have no proper Remedy in this Cafe in the House of Commons, and therefore they must have their Remedy at Common Law: But with great Deference to their Judgments, the Electors have a very proper Remedy in this House in every respect; for here their Votes will be allowed, the legal Representatives returned, and the Officer will be punished for any wilful Default in the Execution of his Office. This is a Remedy that infers the End for which every Elector is intitled to give his Vote, which is not for a private Advantage to himself, but for the general Advantage of the whole Kingdom. But the Action at Law is no proper Remedy in any respect: For since a Vote that is offered and refused, is as good by the Law of Parliament as a Vote that is offered and received, and is so adjudged on the Trial of every Election in the House of Commons, or else they could not all their House with legal Representatives; it is not proper or reasonable that an Officer should pay Damages to an Elector that has not suffered any, nor that a publick Offence should be punished by a private Satisfaction; which is not likely to prevent the Evil, preserve the Vote, nor reduce the Representation; nor is the same consistent with the Constitution, or the publick Safety.

The Qualification of Electors, and the Behaviour of Officers in all Elections, are Matters of Parliament, and such Matters are not cognizable elsewhere, as hath been often declared by all the Judges of England: A Parliamentary Cause requires a Parliamentary Remedy. And since Votes have been refused in all Elections; if Electors, in this Cafe, had been intitled to an Action at Law, it must be presumed, that some Time or other, such an Action would have been brought, which yet was never once attempted in any former Reign; and all those Acts of Parliament that were made to give Damages in Cases relating to Elections, do demonstrate that no such Damages could be recovered at Common Law, for if they could, there had been no Occasion for making any of those Statutes.

It is insisted, That every Right must have a Remedy; but then the Subject must be first deprived of that Right, which in this Cafe he was not; and even when he is, he must have his Remedy in a proper Manner, and in a proper Court. There are several Sorts of Rights, and several Sorts of Laws in England, and there are several Courts of Justice, for the Administration of those Laws: A Man that has a Right to a Legacy, cannot bring an Action at Common Law, but he has a proper Remedy in the Spiritual Court. The like may be observed of Cases that belong

to the Courts of Chancery, Admiralty, Star-chamber, and of the Feoff-laws. The Subject cannot bring Actions at Common Law, in Cases that belong to the Jurisdiction of other Courts. And when my Lord Chief Justice Coke enumerates the several Laws in this Kingdom, he gives the Precedence to the Law and Custom of Parliament, which, he tells us, is superior to the Common Law in *Wigmore's Hall*. And as every Court, or Law has its Customs and Privileges peculiar to itself, and is the Judge of them, so also the High Court of Parliament, *per propriam legem* is constituted, and hath its own proper Laws and Customs, and is the Judge thereof. And if an Action at Common Law will not lie for a Legacy, where the Spiritual Court has a Jurisdiction, tho' the Temporal Courts have, in many Respects, a superior Authority; such an Action will much less lie in a Cafe concerning the Privilege, which is the highest Court of the Kingdom, and who are the Judges of all Cases relating to themselves. But come carry this farther, and say, that every Right must have a Remedy with Damages. This may be true in most Cases, where a Man is deprived of Rights of Property and Possession; but there are many Instances to be given, where a Right of Franchise or Privilege is not intitled to any Damage; as a Person elected Mayor of a Corporation, if the proper Officer refuses to swear him, has no Action at Law for Damages, but his Remedy is by a *Mandamus* out of the *Queen's Bench*: There is a Remedy by *Writ* out of the *King's Bench* for the Recovery of Rights. In a Writ of Right, you shall recover the Land, but no Damages: so in this Cafe, the proper Remedy is to have the Vote allowed, which can only be done by the House of Commons. Some Gentlemen have found out a new Distinction, which I never heard before, that the House of Commons have the sole Privilege to judge of the Rights of Electors, and of the Behaviour of Officers, to one Intert, but not to another, that is, in order to determine who are the legal Representatives, but not to give Damages to the Party injured. But, with great Submission, there is no Weight at all in this Distinction. For, as it is plain, that the Elector is not, in this Cafe, deprived of his Vote, and therefore suffers no Damage; so it is also evident, that the Judgment of the House of Commons, in matters properly cognizable before them, cannot be contradicted by any other Judicary; and therefore their Judgment of the Qualification of the Elector, and of the Behaviour of the Officer, must be conclusive to all Intents and Purposes whatsoever. It is contrary to the Reason of all Laws, that the Behaviour of an Officer should be subject to the Determination of two independent Jurisdictions: Or that he should be answerable by the Judgment of a superior Court, and guilty by the Judgment of an inferior: Or that he should be tried for the same Offence. No Man can serve two Masters: The Officer, at this Rate, will be every way enfeebled, and made liable to Punishment, whether he does his Duty or not: If he accepts illegal Votes on the Poll, he will forfeit goods by the Statute, for a false Return; if he refuses them, he may be ruined by a Maintenance of Actions: for if one may bring an Action, there may five Hundred; since every Man, at this Rate, may offer a Vote, and bring an Action for not entering it upon the Poll. How is this consistent with the Freedom of Elections, in which these ought to be no Terror, neither on the Electors, nor on the Officers? But as the Electors should be free to offer their Votes, so the Officers should be free to judge whether they ought to be entered on the Poll, or not; and they ought not to be accountable to any, but the House of Commons, whose interests they are, in all Matters relating to Elections, and who are entrusted with the Determination of all Matters and Cases relating thereto; and they may as well punish them for taking illegal Votes on the Poll, as for not taking those that are legal. In neither of which Cases have the Judges of the Common Law any Jurisdiction, tho' there is the same Reason in both, to take Care that every the meanest Subject may have Relief for any Injury done him; but we are not to take more Care of the meanest Subject than of the whole House of Commons. The person Subject in England ought to have no Relief but what is consistent with our Law of Parliament, and the Safety of the Constitution. If an Action lies, and upon a Judgment on that Action a Writ of Error lies in the House of Peers, the Lords will be the sole Judges at last, who have Votes to elect a House of Commons; which is directly contrary to the fundamental Maxim of the Law and Custom of Parliament, that the two Houses are mutual Checks to each other, and sole Judges of their own Privileges.

This is an excellent Constitution, and admirably well contrived for the common Safety: But how can this Constitution be preserved, if the Lords can punish our Officers, and govern our Electors? This will be the Way to destroy all Checks, and to make the House of Commons dependent on the Lords; and then I cannot see upon what Foundation you can be said to fit them to be the sole Justice for your Country.

Others insist, That this is a Right that is incident to the Freedom and Privilege of Electors; therefore, as their Freedoms are cognizable at Common Law, so is every Incident belonging to it. This Argument is plausible at first Sight; but, in Reality, there is nothing in it: For tho' the Commons of England have furnished their private Differences to Arbitrators, or Judges, indifferently chosen and appointed by the Prince, the common Peace of the People; yet they have never furnished their fundamental Rights and Privileges, which they hold as their publick and political Capacities, as a free Branch of the High Court of Parliament, to any other but their own Representatives, who are chosen and appointed by themselves. This is not a Case, properly speaking, between Party and Party, but between the Lords and Commons, because the Determination of this Cafe brings the whole Right in Question. Who hath a Privilege to judge of the Qualification of Electors to give their Votes in Election of Members to serve in Parliament, Whether the Lords or the Commons? It is not now the Question, Who hath the best Right to a Freehold, or Freedom, or to any thing that is incident to it? But, Whether the Commons of England shall have any Freeholds, or Freedoms at all? Or, whether in the same Thing in effect, Whether they shall have any Security for those Rights or not? For if the Lords are Judges of your Privileges, you can hold no Right but during their Pleasure.

The

The Lords seem to contest for the Right of the Subject, but I with it not for a Power to enable themselves to judge and determine as they think fit of all our Rights and Liberties; for this is the necessary Consequence of allowing an Election to have a Remedy in any other Place but within their Walls.

This is my humble Opinion; and if I am mistaken, other Gentlemen will set me right. This is certainly a Matter of the highest Importance to the Welfare of the Subject, and I doubt not but they will very well consider it, before they give way to the establishing a Precedent that tends to destroy the Privileges of this House, or the Liberties of this Country.

A great Testimony is express'd for this poor Man, whose Vote has been refus'd, who whether he had a Right to give his Vote, is very much questioned, and never yet determined by this House, which has the power of Judicature thereof. But admitting he had a Vote, Whether ought to be refus'd a private Intrest, or the publick Safety? Whether will be mov'd for the Honour of this House, and the Interest of our Election, The Care of a private Person by new-invented Adion, neither warranted by Reason, Precedent, or any establish'd Law; or the Care of the Parliament, and the Constitution, on which depend the Rights and Liberties of all the Commons of England?

But, I beg Pardon for taking up so much of your Time, but I must confess it seems to me, that our Adion depends upon a right Determination of this Matter, for I cannot for any other Reason say this new Device is supported by the Lords, but only to render you precocious and useful.

Sir Gilbert Dailen (afterwards a Judge in Ireland). Mr. Freeman, I shall not be able to say very long at this time of Day. I think the Point in Debate has been truly stated by the Gentlemen who have insisted on this Question. "Whether an Adion will lie for an Election, for having been refus'd his Vote at the Election of a Member to serve in Parliament?" A learned Gentleman would have the Question to be, not "Whether an Adion will lie; but, Whether this House has the sole Right of determining that Matter, and of giving Remedy in it?" I confess I think it is more properly stated the other way. But the thing is scarce worth a Dispute, since which way you turn the Tables, it comes to the same Point, and one of the Questions will in consequence be refus'd by the Resolution of the other: For if that Question be put which is propos'd by the Gentlemen, and carried in the Affirmative, that this House has the sole Right of determining this, and all other Matters whatsoever that concern the Right of Election; then it must follow, that whoever is wrong'd in any such respect, cannot be redress'd by Adion, since the Right of determining in Cases of this Nature, is not in the Courts below, but solely in this House.

I shall not offer you any Arguments to prove this sole Right, many having been us'd by others; but I will consider some things (without taking up much of your Time) that have been offer'd as Objections to it. Some Gentlemen have made a Distinction in this Case, between the Right of the Electors, and of the Electee; and they will have it, That the Courts below may decide the first, but not the last: Whereas, in my poor Opinion, the Decision of the Electors Right must necessarily in many Cases decide who has Right to be electee. For suppose a common Case, That one of the Candidates insists upon an Election by a secret Number, and the other upon a popular Election: If in this Case one of the People be refus'd his Vote, upon a Promise that he is one of the select Number, whereupon he brings his Adion against the Officer; will not the Event of that Trial determine (in consequence) the Right of the Candidates? Surely it must; since, if it go for the Plaintiff, he for whom the Plaintiff offers to vote, and who had the popular Interest, will appear to have had the Right of Election; and so will the other Candidate, if it go for the Defendant. Several other Cases to the same Purpose might be put: So that if an Adion of this Nature should lie, it must (as I apprehend) unavoidably follow, That *Wynne-Hall* by original Adion, and by Writ of Error the House of Lords, will have Power to determine, (at least consequentially) who has Right to sit in this House, and who not. And how consistent such a Determination will be with your undeniable Right (acknowledg'd on all Sides) of determining the Elections of your Members, exclusive of all other Jurisdictions, I leave to Gentlemen to consider.

A learned Person was pleas'd to object, That Right is founded upon Usage; and if this House had the sole Right of judging in a Case of this Nature, where a single Elector is wrong'd, doubtless there would be some Precedent of Relief given to such an injur'd Person. But (says the Gentleman) there is no such Precedent, and therefore it must follow, That this House has not the sole Right of relieving in that Case. I think I may safely deny his last Proposition, as he applies it to the Rights of this House, which (generally speaking) are not founded upon Usage. Sir, the Rights of Parliament are chiefly founded upon the Nature and Constitution of Parliaments. Usage is indeed a Corroboration, and an Evidence of these Rights; but the Foundation of them is our being a Part of the Legislature, whereby we necessarily become invested with all Rights and Privileges as essential to us, and to discharge our Duty in that great Capacity: So that it is not so much what has been us'd, as what is necessary to the Support of our Constitution, that must be the Rule and Measure in determining the Rights of the House of Commons.

But neither has Usage been wanting in this Case: For whereas the Gentleman asserts, That there is no Precedent where this House has given Relief to a wrong'd elector, (with Submission) several such Precedents appear upon your Books, particularly in the Case of *Bensley*, where four or five of the Inhabitants complain'd, and the House gave a Remedy. And I cannot see why, if it has been given to four, it may not be given to one, nay, I should think, if more than one have been refus'd, a *feint* one should be relievable.

But it seems to me, that the Argument drawn from Usage, goes much further than the learned Gentleman intended it should, for if all Rights be founded upon Usage, all Right of Adion must be so founded; and then what becomes of this Adion, which the Gentlemen has insisted

to support? If Usage be nothing else but the Reputation of the like Acts, then this Adion (according to the Gentleman's Rule, that Usage is the Foundation of Rights) cannot be right, which there hath been a Reputation of the like Adion.

Nor can it be said, that this is the first Time any such Cause of Adion has arisen, and that therefore it could not have been brought before; for there has scarce been a Parliament call'd in any Reign, but some or other has, without doubt, been wrongfully refus'd his Vote: So that the Cause having been frequent, it must have had the like Effect ere now, in Case such a Wrong could have been redress'd by bringing such an Adion.

But no Gentleman has pretend'd to say, That any Adion of this Nature was ever brought before, and therefore we may infer from the learned Gentleman's own Position, as likewise from the Authority of *Lindley's* Text, That since none has been brought, none can be brought, and this has been the constant Opinion of the Courts in *Wynne-Hall*, the Judges having, upon every Occasion, where the Rights of Parliament have fallen under their Consideration, in all Times declared, That nothing of that Kind is within their Jurisdiction: Nor can they judge of any such Matter, farther than as they are impos'd by particular Statutes.

And this was the Reason why the Judgment in *Barnardiston's* Case, given in the *King's-Bench*, was revers'd in the Exchequer-Chamber, because it was a Third part of Parliament's Cognation, the House of Commons having the sole Power of determining all Matters relating to Elections and Returns, except in Statute-Cases. Nay, the Court of *King's-Bench* had declared, They would not have proceeded in this Adion of *Barnardiston*, had it not been grounded upon a precedent Judgment given in the House of Commons. But the Judges in the Exchequer-Chamber thought, that even the Determination of the House was not a sufficient Authority to the Courts below, to hold Plea in an Adion relating to the Rights of Parliament, tho' the Adion was ground'd upon that Determination; and therefore they revers'd the Judgment given in that Adion: And (which is a mighty strong Circumstance in the Case) that Reversal was unanimously in the House of Lords. So that it is plain, even the Lords themselves were, at that Time, of the same Opinion with the Judges, That nothing which concern'd Elections was cognizable in *Wynne-Hall*: For otherwise they could not have affirm'd the Judgment given in the Exchequer-Chamber, which was ground'd entirely upon that Maxim.

This appears farther, by what their Lordships did in the Case of *Holly and Elton*, against whom Judgment had been given in the *King's-Bench* for what they had said and done in this House. In the Year 1669, the House of Commons voted, That the Judgment given in the *King's-Bench* against those Persons was illegal, as being against the Privilege of Parliament. And this Vote was (as I remember) deliver'd as the Lords at a Conference, with a Desire of their Concurrence to it: Accordingly, the Lords sent a Message, That they did consent. Nay, they were so desirous as to defer the Lord *Holly* in bringing a Writ of Error upon that Judgment, which was done, and the Judgment was revers'd. From whence it must be infer'd, that their Lordships were then of opinion, whatever Judgment is against the Privilege of Parliament (that is, of either House of Parliament) is an illegal Judgment.

Now to lay their two Opinions of the Lords together: If the House of Commons has the sole Privilege of judging all Matters relating to Elections (upon which Ground their Lordships affirm'd the Reversal of the Judgment in *Barnardiston's* Case), and if every Judgment given against the Privilege of Parliament be illegal (as their Lordships both affirm'd and judg'd in the Case of *Holly and Elton*), how comes it to pass, that the Lords have lately thought fit to reverse the Judgment given in this Case of *Abbey and White*, which was ground'd upon that very Opinion, establish'd by their Lordships in the Case of *Barnardiston*? That all Matters concerning Elections are determinable only in the House of Commons! And consequently, how can we avoid saying, (pursuant to the other Opinion, and to the Judgment they gave in the Case of *Holly*) That their Lordships Judgment of Reversal given upon the Writ of Error in *Abbey's* Case, being against what themselves have own'd to be the Privilege of the House of Commons, is an enormous (not to say an illegal) judgment?

I confess I cannot much wonder at its being so, when I consider, that the Steps their Lordships made in proceeding to this Judgment of Reversal, were so very hasty, as not to afford them sufficient Time to weigh and to deliberate upon a Matter of such Importance. This Cause had depended near a Twelvemonth in the *King's-Bench*, it had been argued several Times at the Bar, and at length *serio* by the Judges, Three of whom, upon the Reason of former Resolutions, gave Judgment against the Plaintiff, that the Adion does not lie: And yet, no sooner was this Writ of Error brought, but the Errors are immediately argu'd; and upon the first Argument, the Opinions of the Judges are required, and notwithstanding they deferr'd Time but till the next Day to consider of the Case, the Lords (as I am very well assur'd) would not allow them an Hour, but oblig'd them to deliver their present Thoughts, which tho' several of them express'd very doubtfully, and several others were for affirming the Judgment, yet their Lordships were so very clear, and so determinate in the Point, that, without any farther Considerations, the Judgment was revers'd.

And now I desire Gentlemen to judge, whether in this Instance the Lords have shewn that Regard either to the Privileges, or to the Dignity of this House, which their Ancestors, and themselves, had formerly express'd upon the Occasions before mention'd.

I will take Notice but of one Thing more, which fell from a learned Gentleman, who insist'd, that the Election to Parliament is not a Service, but a Privilege, because double Damages are given by the late Act concerning Returns. I have call'd my Eye upon that Act, and I think, if the Premise be real, it will appear, that Gentlemen was somewhat unfortunate in appealing to it, for the Statute calls the Election to Parliament a Service, in express Terms, and certainly with good Reason. If the House will give me Leave, I'll read it.

W^hereas

- "Whereas false and double Returns of Members to serve in Parliament are an Abuse of Trust in a Matter of the greatest Consequence to the Kingdom, and not only an Injury to the Persons daily chosen, by keeping them from their Service in the House of Commons, and putting them to great Expence to make their Elections appear, but also to the Counties, Cities, Boroughs, and Cinque-Ports by which they are chosen, and the Balance of Parliament disturbed and delayed thereby, It is therefore enacted—

Sir, not to trouble you any longer, I am entirely for the Question, as it is posed.

Mr. King (afterwards Lord King, and Lord Chancellor). That which calls me up, on the first Place, is what that honourable Gentleman just against me, was pleas'd to intimate, as if the Right of Election was only a Service, and not a Liberty, or Privilege; and I find a worthy Member, that spoke last, is of the same Opinion. Truly, I am loth to tell you my own, without defining the Act 25 Car. II. cap. 9. may be read—

Members. No, no.

Mr. King. 'Tis as A to enable the County Palatine of Durham to send Members to Parliament; and it recites, That they had not, before that Time, had the Liberty and Privilege of electing and sending any Members to Parliament. Whereas you say the Legislature call it a Liberty and Privilege; and of the Legislature call it so, I think I may venture so call it so too. And as it be a Liberty and Privilege, then the Question will be, Whether it does not stand on the same footing with our Liberties and Privileges? In Case of any other Franchise or Liberty, an Action lies as Common Law for the Breach thereof, and why an Action should not lie as Common Law for the Breach of the Franchise, as well as for the Breach of every other Franchise, is, to me, very strange. Gentlemen take it for granted, that is purely an Action at Common Law, and no Statute has any Influence on it. Now there is a Statute which hath not been mention'd, (only I must first permit that which, I think, no body will deny, viz. That whether an Act at Parliament does forbid any Thing, if any body be injured by the doing of the Thing prohibited by that Act, in consequence of Law, the Person injur'd hath an Action.) I say, there is a Statute that forbids Disturbances or Hindrances in Matters of Elections; and by consequence of Law, that Statute gives an Action to the Person injur'd, against the Person disturbing or hindering him in his Election. The Statute I mean, is the 3 & 4 E. 6. cap. 13. that is a positive Law whereby all Disturbances in Elections are forbid. Every Man is forbid to hinder or disturb by Force of Arms, by Malice, or menacing any Man, to make a free Election.

I shall only influence in one parallel Case, tho' I could in many more: The Statute in Ash. His Time, do *Sanctio Magna*, only forbids the giving Ball of great Men; there is not one Word of an Action, yet, by Operation of Law, it was always held, that an Action would lie upon that Statute for a Scandal of a great Man, because it was prohibited by that Statute. So here, the Statute forbids the disturbing of any Man by Force or Malice to make free Election; the Jury have found, that the Defendants, in this Cause, maliciously disturb and hinder the Plaintiffs from voting at the Election; and by a like Consequence and Operation of Law, this Action is maintainable.

Gentlemen say, this is a new Action never heard of before. It is true, this particular Action was never brought before, but Actions of the same Kind and Nature, and grounded on the same Principles and Reasons of Law, have been brought before. As all *actiones ex rebus* may. I could give many instances of this Kind. We a *common law*, tell the same with Car. II. that an Action lies against an Officer for denying a Bail to one who stood Candidate for a bridge-walk. The Mayor denied the Bail, and said, he was Judge of the Election: And upon this, the Person injured brought his Action, and recover'd. At the same Time it was said, there was no such Action ever heard of before, 'tis true, not that Species, but the Cause was heard of. Another Action was brought 30 Car. II. (which was never heard of before) against a Mayor, for refusing the Plaintiff's Vote for a succeeding Mayor.

I believe every body knows, that all the Law-Books for 400 Years, say, That the King's Bench had Liberty to go into an Estate of a Tenant for Life, to see if he commit Waste. And no Action was ever brought till 16 Ja. I. by a Reversioner against a Tenant for Life, for refusing to let him in to see whether Waste was committed. No Action was ever brought against a Master of a Ship for the negligent Keeping and Loss of Goods on board his Ship, till about the 24 Car. II. and yet the Action lay.

There was another Action in K. Car. II's Time, brought for a false and malicious Prosecution of an Indictment of a Man for Treason. There was the same Objection; and it was said, That this would deter People from prosecuting. And nobody ever dream'd of it before, 'tis true, but it stood upon the general Reason of the Law; if you do me a Wrong, I must have a Remedy. And as to what a worthy Gentleman hath said, That there are instances at Common Law, where a Man shall recover and yet have no Damages; 'tis true in real Actions, but let him give me an instance of that in an Action of this Cafe. His members consider then; if he does not recover Damages in real Actions, he recovers the Land itself.

Members. The Question, the Question.

Mr. King. I find Gentlemen are very uneasy, I will trouble you no farther.

Members. Go on, go on.

Mr. King. I agree, the determining the Right of Election belongs to the House of Commons; and they ought to apply to the House of Commons in that Cafe. And I shall not depart from that, I think I can't, without running the Constitution; but that which I say is, That this Action is brought by a Man that hath an undoubted Right of voting, against an Officer for maliciously refusing his Vote. Put the Case that had happen'd in a County, (for the Law would have been the same) that a Freeholder, who had a Right to vote, had tender'd his Vote to the Sheriff, and tho' he knew he was a Freeholder, yet the Sheriff should maliciously refuse his Vote: Hath the Sheriff done that Man an Injury or no? This Man does

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not bring his Action, because the Person he would have voted for is not return'd, but 'tis because there is an Injury done to his Franchise. If I thought the Right of Election was concern'd in this Cafe, I would go as far as any, for I think that does belong to the House; but I don't think this is concern'd in the present Cafe.

Sir Thomas Littleton. I shall be better than I can imagine. It has been discourag'd, Whether this be a Privilege, or a Burden, &c. Let them think it a Burden that call it so: If it be a Burden, 'tis such a Burden as some Men spend a great Part of their Estates in, as if it was a Privilege. I think this Resolution which is propos'd, tends to the recovering one Man to injure another Man's Franchise with out any Reparation, which I believe is not very consistent with Law, or Reason. You have, no doubt, a Power of punishing the Offenders, but you can't give Damages. I think this is a plain Case; here was a Man who had a Right to vote, and was not admitted.

Members. No, no.

Sir Thomas Littleton. That is admitted upon the Judgment. For this Cafe is made upon the Right; and if he had not prov'd his Right, he could not have recover'd. Then if he was denied his Right, nobody will say, We can give him Damages. What would you have a poor Man do, come with a Petition, and for Counsel, and attend the Parliament for a Month together? The Man it seems thought it better to go this way. I think, if he had complain'd, we might have punish'd the Officer; but for Damages, he could have them no way but this.

Suppose the Judges in *Wykehouse Hall* had been of Opinion, That this Action did lie, and the Constables had brought a Writ of Error: What would you have said in a Case where a Man had been denied his Privilege of Voting, and the Law had given Damages, if the Lords had said No, there shall be no Action? I think the Lords have done what is right, I think they have resolv'd the Point injur'd according to Justice; and it does not interfere with your Rights, for he founds his Action upon your Determination.

Members. No, no.

Mr. Waple. Mr. Fennes, I desire to have the Question read. Accordingly Mr. Fennes in the Chair read the Question again.

Mr. Serj. Hanger. A Gentleman that spoke last but one, was pleas'd to say, That if he thought the Right of electing Members was any ways concern'd in this Question, he would come heartily into it. I know not what that Gentleman means by it, but believe all future Elections will depend much upon the Determination you make now. If you give the Lords this Jurisdiction to take Cognizance of Matters relating to Elections, we must come to them to know whether we have a Right to sit here. One Gentleman said, he could not tell whether the sitting here was a Burden, or a Privilege. I think it is a Privilege to some, who by sitting here obtain a good Place; but I think as to others, it may be look'd upon as a great Burden, for to come up and spend a great deal of Money for the Publick Service; and all the Privilege that I know they have is, to protect their Estates, and serve their Country.

I have no extravagant Thing but may be brought into the House of Lords, if you countenance them in the Jurisdiction they have now taken upon them. Any Action whatsoever, let it belong to any Temporal Jurisdiction, may be there determin'd. I will tell you, notwithstanding what is objected against the Judges, they will do their Duty, but I might say, I had now no Barrier, for whatever is there determin'd, may be brought by Writ of Error to the House of Lords, and they will determine as they think fit. In the Case of *Stanes and Mansel*, the Law was taken to be, that *Wykehouse Hall* had not a Right to intermeddle in these Matters. What then hath since altered the Law, unless the Lords have the Legislative Power in them? And that I dare say they will have, if you allow them this.

This I must take Notice of from the Report now before you, that here is a Step made, which if it had been made in another Jurisdiction, I should have given a hard Name to it.

I think, in the first Place, the Party should be brought in by the Queen's Process. When Errors are to be assign'd, there ought to go out a *Sub Poena*, which is the Queen's Writ; but here is only an Order made, and for what? That the Party shall join Issue upon the Writ of Error. Suppose there had been a Release of Errors, would or have join'd Issue upon the Errors? And yet it is what is ordered before the Party is bound. I say, if they have a Jurisdiction, the Party ought to be called in by *Sub Poena*: And no Judge, or Justiciary can grant Execution, or Process, but it must be in the Queen's Name. As for your Question, I come heartily into it.

Sir William Stoddard. Mr. Fennes, I think this Quest depends upon two Points, and I believe the last way to divide 'em no Question. One Part of it concerns the Rights and Liberties of this House, and I think every body will come up to it. And as I would not tell the Privileges that belong to the House of Commons, in I would not tell the Privileges of the Commons of England, which we here represent. As one is the Privileges of this House, so the other concerns the Liberties of the People of England, who cannot otherwise come to a Remedy when they are abused in this Manner. The Gentleman that call'd it a hard business, if he would tell his Country, I believe he might be excus'd, and they would find another in his Room.

Mr. Waple (afterwards Sir Robert, and Chancellor of the Exchequer, and afterwards Earl of Oxford). I will trouble you very little at this Time; I think the Point of Learning and Law has been to well spoken to by those learned Gentlemen that have been against the Question, that if I was said, I should say nothing more to that. But I think the Question, as 'tis going to be put, says right; for as the Question stands, the I cannot give my Negative to one Part, I think 'tis impossible to give my Affirmative to the other. The Matter before you comes to this single Question, Whether you will encourage, and give a Power to an Officer, be he whom he will, to shut arbitrarily, or rather abuse, in such a Cafe, to do something in Favour of the Electors? I am sure, if I desire to be elected, be that that had the Right, I would never give the Officer an Authority so the *Procurator*

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of the Electors. When you come to say, that the sole judging of the Qualification of the Electors belongs to the House of Commons only, those, I apprehend, are Words of too large Extent and all Consequence. Suppose there was an *Adieu* brought upon the last Act of Parliament, for a full or double Return.

Mr. *Freeman*. There is an Exception in the Question as to that. Mr. *Wolke*. I know there is, but suppose an *Adieu* brought upon that Statute, the Officer may have proceeded with the greatest Impartiality, may have taken the Poll with the greatest Exactness and Justice, and there may appear to be an equal Number of Votes for each Candidate, whereupon he makes a double Return, and this brings it to be determined by the Committee of Elections, and they vote one of them duly elected. This Gentleman that had the Favour of the Committee, (though afterwards possibly it might be made appear, that by Bribery or Corruption, and at a great Expence, he procured himself to be elected) after you have voted him duly elected, he hath nothing to do but to say his *Adieu*, and for if he can make his double Damage amount to his Expenses. The first Thing he is to do, is to produce the Vote of the House of Commons that declare him duly elected, contrary, perhaps, to the last Determination in Parliament, which, in every Place, is to be the Guide to the Returning Officer. But shall these then be given in Evidence no Qualification of the Electors? Nothing to prove, that the Persons admitted to vote were qualified according to such last Determination? Or shall that Vote of the House of Commons, that was intended only to bring him into this House, recover him 5 or 600 l. Damages? I take it to be so, as the Law stands. Now it ought to be seen who hath the greater Number of legal Votes, and whether duly qualified; and in that Case you must suffer the Matter again to be tried by the Court, and you do, in some Measures, make them Judges of the Qualifications of the Electors; if it were otherwise, they could not enquire into the Majority of legal Votes.

What happens in the Case of a Mayor, may be in the Case of a Sheriff: If a Mayor or a Constable try deny a Man his Vote that hath an uncontroverted Right in a Corporation, a Sheriff may refuse a Freeholder, and strike off enough to make a Majority for whom he pleases. You had once the Case before you, Whether a Sheriff could refuse a Sheriff, and one or two Gentlemen were given that Power to a Sheriff, but a learned Gentleman thought it a dangerous Question, and he desired to come to the Merits of the Election; and that was determined, and you voted the worthy Member duly elected, and that was it a dangerous Thing to determine, Whether the Officer had that Power one Way or another? I think that Part of the Question, which concerns the Qualification of the Electors, ought to be left out.

Mr. *Freeman*. I will read the Question. (*Which he did*.)
Marquis of *Horwington*. Sir, I think it is a constant Rule, where a Question is complicated, for the Right of every Member, if he define it, to have the Question divided, and I think it regular to do it by an Amendment; and therefore I second that worthy Gentleman, that you would leave out those Words that relate to the Qualification of the Electors.

Mr. *St. John*. My Lord is undoubtedly right in what he desires; That if there be any Words in the Question to which Gentlemen have a Difference, that Question is not to be put; but only, Whether these Words shall stand Part of the Question? Therefore if those Words of the Qualification of the Electors do give Offence, it must be put, Whether they shall stand Part of the Question? But I hope at the same time Gentlemen will append, that leaving out those Words, leaves out all that you have debated on.

Sir *Christopher Mordaunt*. No doubt if any Question is complicated, Gentlemen do not know how to give an Affirmative or a Negative, and you must divide it: But I hope Gentlemen will consider the latter Part of the Question is the main Thing whereon you have debated; for if you do not assert that you have the Power of determining the Qualifications of the Electors, you give up the Right of the Commons of England: I do agree that the Question may be divided.

Mr. *Freeman*. But which is debated now, is, Whether those Words shall stand Part of the Question?

Sir *James Mackay*. So, I think the Question ought to be divided.

Mr. *Freeman*. The Question, as I have it upon my Paper, is this: "That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament."

But some Gentlemen are for leaving out those Words, ("Neither the Qualification of any Elector, or") So that I must put a Question, Whether these Words shall stand Part of the Question?

Members. Aye, aye.

Then Mr. *Freeman* put the Question, and the Committee divided.

Teller for the Ayes, Mr. *Goslin*, 215

Teller for the Nays, Mr. *Wolke*, 97

So it was carried, that these Words should stand Part of the Question.

And the main Question being put,

Resolved,

That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament.

Resolved,

That the examining and determining the Qualification or Right of any Elector, or any Person elected to serve in Parliament, in any Court of Law, or elsewhere than before the Commons of England in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament, will engage all Mayors, Bailiffs, and other Officers, who are obliged to take the Poll, and make a Return thereupon, to Multiplicity of *Adieu*s, vexatious Suits, and unprofitable Expenses, and will subject them to different and undependent Jurisdiction, and inconsistent Determinations in the same Case, without Relief.

Resolved,

That *Thomas Adley* having, in Contempt of the Jurisdiction of this House, committed and perpetrated an *Adieu* at Common Law against

William White, and others, the Constables of *St. Andrew*, for not receiving his Vote at an Election of Burgesses to serve in Parliament for the said Borough of *St. Andrew*, is guilty of a Breach of the Privilege of this House.

Resolved,

That whoever shall presume to commence or prosecute any *Adieu*, Indictment, or Information at Common Law, which shall bring in the Right of Electors, or Persons elected to serve in Parliament, to the Determination of any other Jurisdiction than that of the House of Commons, except in Cases specially provided for by Act of Parliament, or in Person and Person, and all Attorneys, Solicitors, Counsellors, Sergeants at Law, collecting, prosecuting, or pleading in any such Case, are guilty of a high Breach of the Privilege of this House.

Ordered,

That the said Resolutions be fixed up on *Wyndham-Hall Gate*, signed by the Clerk.

These Resolutions, with this (to wit,

Resolved,

That according to the known Law and Usage of Parliament, it is the sole Right of the Commons of England in Parliament assembled, except in Cases otherwise provided for by Act of Parliament, to examine and determine all Matters relating to the Right of Elections of their own Members.)

Before passed in the Committee, were reported to the House.

Monday, 26 January, 1703.

Mr. *Freeman* reported the five Resolutions agreed to by the Committee; the first Resolution was not opposed, but after the second Resolution (was).

That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament.

As for read the second time by the Clerk, the Question (according to Order) being proposed to agree with the Committee in that Resolution, the Marquis of *Horwington* stood up in his Place, and spoke to this Effect:

Marquis of *Horwington*. I do not expect the House will be of a different Opinion from the Committee; but I think it is my Duty, when I apprehend what you are doing will be of all Consequence to the Constitution, to give my Difficult in every Step. I think it will be dangerous to the very Being of this House: If this Motion had been allowed formerly, I think there would have been no Need of taking away of Charters, and of *St. John* *Worship*'s, by the Influence of Officers they might have filled this House with what Members they had pleased, and then they could have voted themselves duly elected.

Sir *William Stirling*. Mr. Speaker, I cannot agree to this Resolution; I think it deprives the People of *England* of their Birth-right. For they who have Freeholds in any of your Counties, or Freeholds in any Corporation, have as much Right to vote in Elections to Parliament, as they have to their Estates. And if any Gentleman would subject them to such arbitrary Proceedings, that a Sheriff, or any other Officer, may deny them this Privilege, give me Liberty to say, I must be always against any such Thing, for though you can punish the Officer, you cannot give any satisfaction to him that receives the Injury.

Mr. *St. John*. Sir, I do not rise up to trouble you long, but to speak to one Point that was mentioned by a Noble Lord on the Way. I shall be as tender as any Man alive of doing any thing against the Liberty of the People; but I am for this, because I take it to be the greatest Security for their Liberty. The Noble Lord was pleased to take Notice, that in the Consequence the Crown would have a great Influence on those that are to return the Members of the House of Commons; and when they were in, they might vote for one another. I cannot think that the Liberties of the People of *England* are safer in any Hands below, or that the Influence of the Crown will be stronger here than in other Courts.

Marquis of *Horwington*. I think this Gentleman hath not answered what I said. I shall never have any Suspicion of any that sit in this House now; but when those that have no Right are returned, and make a Majority, I think it will not be safe.

Mr. *Wolke*. I do not apprehend that Consequence from this Resolution. I think if it was so, this should have been offered before the last Resolution was passed, which hath passed in the House and Committee, *Non est contrarium*; for you cannot determine the Right of any Members sitting here, without determining the Right of the Electors.

Mr. *Lawson*. I cannot but think it will be harder to influence this House to get an ill Vote, than it will be in another Place: However, I am a Freeholder, and have a Right to vote in a County, or a Freeman, and have a Right to vote in a Borough, by admitting Persons to vote that have no Right, it may be as much Prejudice to me, for that may make my Vote signify nothing: And there is as much Injury one Way as the other. If all the People of *England*, who have a Vote, should go together by the Ears in *Wyndham-Hall*, and dispute there who has a Right to vote, and who not, I believe the Judges of the Common Law, and Noble Peers of the other House, would be glad, in a little time, to reverse the Right where it is, it would breed so much Confusion. If Gentlemen are not satisfied already, they may easily be so. There is no Defect of Power in this House, but they have a Power to do Justice in all Cases of Elections; and I hope every Body will take Care, not only to maintain the Rights of the People that sit there, but that the Truth lodged in them, which they cannot depart from by the Rules of Justice.

Then the second, with the other three Resolutions passed in the Committee, was agreed to by the House without a Division, with this Amendment only, of leaving out [at Common Law] in the fifth Resolution.

But the House, though they voted *Adley* guilty of a Breach of Privilege, in commencing and prosecuting the said *Adieu*, yet there having been no Declaration of the House in that Case before, they made no Order for taking him into Custody, as usual in Cases of Breach of Privilege.

Upon

man of Law for his own Wines, in which the Corporation of the City hath no Interest.

But there is no such Nocton in the Law of England as a Right without a Remedy.

The first Thing appears by the Case of *Waller and Symonds, 1 Sess. 347.* and by the Case of *Judith and Waller*. These Instances make it sufficiently appear, that though the Inhabitants of this Franchise be in the Body Corporate, yet it is for the Benefit of the particular Members thereof. And it is certainly a great Advantage for the Men or Inhabitants of a Place to chuse Persons to represent them in Parliament, who thereby will have an Opportunity, and be under an Obligation, to represent their Grievances, and advance their Profit.

Of this Opinion have two Parliaments been, as appears by two several Acts, the one 31 & 32 H. VIII. cap. 13. the other 35 Car. II. cap. 9. The first is an Act for making Knights and Burgesses within the County and City of Chichester, which begins in this Manner, *It humble self shewes to your Majesty, the Inhabitants of your Grace's County Palatine of Chichester, That they have been and are separated from your High Courts of Parliament to have any Burgesses within the said County, by Reason whereof, the Inhabitants have lost their ancient manifold Liberties and Privileges, as well as their Lands and Goods and Estates; therefore it was enacted, That they should have Knights for the County, and Citizens for the City of Chichester.* The other Act, which continues Knights and Burgesses for the County Palatine and City of Durham, recites, *That the Inhabitants thereof have been and are without Liberty and Privilege of electing and sending Knights and Burgesses to the High Court of Parliament.*

The Application of these Two Acts is very plain; the first faith, To be excluded from sending Knights and Burgesses to Parliament, is a Damage to Lands, Goods, and Body: the other faith, That it is a Liberty and Privilege to send them.

Thus the Right of Election is explained, and shewes to be a legal Right.

That of electing Knights of Shires belonging to and inhering in the Freehold.

The order of electing Burgesses is belonging in some Cities and Towns to the real Estates of the Inhabitants; and in others, is vested in the Corporation, for the Benefit of the particular Members, who are the Electors; the having of which is a great Benefit and Advantage to the People thereof, and will prevent great Loss and Damage that otherwise would ensue.

It is followeth, That in consequence of this Right or Privilege, the Petitioners thereof must have a legal Remedy to assert and maintain it.

It was said, That there are many Rights for which a Man has no Remedy by the Common Law, as in Case of a Legacy given, if it be not paid, the Party cannot bring an Action for it. This is very true, but not applicable to the present Purpose; for the Constitution of the English Government has wisely distributed to several Courts the Determination of private Causes, but has left no Subject in any Case where he is injured, without his adequate Remedy, if he will go to the right Place for it. If a Man will seek for a Remedy at Common Law, for a Legacy, which by our Constitution is to be recovered in the Ecclesiastical Court, it is his own Fault if he do not recover, as it would be if he should begin a Suit for Land in the Court of Admiralty, or go for Equity to the Common Pleas.

He who suffers quits his Remedy when he is injured if a Man has a Remedy for Payment of one Thousand Pounds, he has no Remedy to recover this Money but by Action; therefore, if it be due to him, he is obliged to recover it, or he is to be content. But, if he has any way the Means to recover it, *Choke's Right Rep. 129.* *Burdett's Case*. If a Man purchases an Advowson, and at the next Avoidance suffers an Usurpation, and brings an Action, and at the same Time, he hath lost all manner of Remedy, and in consequence his Right, to which neither he nor his Heirs can ever be restored.

Would it not look very strange in a Constitution so formed, that the Commons of England have an undoubted Share in the Legislative Authority, which is to be executed by their Representatives chosen by themselves, in which every Freeholder, of Forty Shillings per Acre, hath a Right to vote for the County, every Common for a City, and every Burgess for a Borough; that if the Sheriff, or other Officer, who is to cause the Election to be duly made, shall hinder or deprive any of these Electors of his Right, the Person injured shall have no Remedy, though the Injury be done to such a Right, upon the Security whereof the Lives, Liberty and Property of all the People of England so much depend.

That the Defendants, in this Case, by hindering the Plaintiff from voting, have done ill, cannot be denied; because they have excluded one who has a Right to sit in his Vote. Then, if the Law doth not allow an Action to the Party injured, it tolerates the Injury, which is absurd to say is tolerable in any Government.

That some Weight had upon the Case of *Ford and Hylkin, 2 Cr. 388.* *M. 842.* which is, that where, by the Custom of the Manor, every Tenant for Life might name his Successor for his Life, whose the Lord is to admit; if one be named, and the Lord refuses to admit him, it was held, an Action on the Case would not lie, because the Nemo had no Right without being admitted. But the Reason given for that Opinion shews it had no Relation to this Case. The Plaintiff's Right of voting is vested in him without any previous Admittance; therefore, though it should be a Law that no Action will lie for not giving a Right, yet certainly an Action must lie for defending and injuring a Man to enjoy a Right that he hath.

Where any Statute requires an Act to be done for the Benefit of another, as to barrow the doing of an Act, which may be to his Injury, though an Action be given in express Terms by that Statute, for the Commission or Commission, the general Rule of Law in all such Cases is, That the Party injured shall have an Action, *4 Co. 10. Rep. 75.* The Case of the *Marbushes, 12 Rep. 106.* *See Adm. Cas. 118.* This is a Maxim allowed and approved of in all Ages.

There is the same Reason where the Common Law gives a Right, or prohibits do as a Wrong; But in such Cases, an Act of Parliament is not wanting, for the Statute of *Wylt. 1. cap. 5.* enacts, *That Elections shall be*

free, if he who hath a Right to vote be hindered by him who is to make his Vote, or to manage the Election, that Election is not free, such an Impediment is a manifest Violation of that Statute, as well as an Injury to the Party whose Vote is refused. This Statute of *Wylt. 1.* shews what Opinion the King and Parliament had of the great Consequence it was to the whole Realm, That People should have their Freedom in Chances; and though the Common Law was the first before, as appears even by the Statute itself, the Words whereof are, *Electio, quæ sit de Free*, yet it was judged necessary to add the Statute of an Act of Parliament thereunto; *The King commands upon great Petitions, That no Great Alder, or other, by Force of Arms, or by Advice or Misadvice, shall disturb or make Free Election.* The Defendants did not, by Force of Arms, drive the Plaintiff away from the Election, nor by Menaces deter him, but they did maliciously hinder him (for it is charged by the Plaintiff in the Declaration, and it is found by the Jury to be done by Fraud and Malice), and so the Defendants are Offenders within the very Words of the Statute of *Wylt. 1.* Where the Law is so clear as to the Right, and the Duty to be strictly enforced by Act of Parliament to be observed, it seems a great Presumption to make it but a light Thing.

It being apparent that the Plaintiff had a Right, and that the Defendants have done him Wrong, and that by Consequence of Law he must have some Remedy to vindicate his Right, and to repair the Wrong.

III. The third thing to be shewn is, That the Remedy the Plaintiff pursued by bringing this Action is the proper Remedy allowed by the ancient Law of England.

This Action is that which is called in the Law an Action upon the Case; that is, founded upon the particular Case of the Party injured.

The Law in all Cases of Wrong and Injury hath provided proper and adequate Remedies.

1. When a Man is injured in his Person, by being beaten or wounded, the Law gives him an Action of Trepsass, Assault and Battery, if by being imprisoned, an Action of false Imprisonment.

2. If his Goods be taken away, or Treasures done upon his House or Land, an Action of Trepsass lies to repair him in Damages.

3. If a Man hath a Franchise, and is hindered in the Enjoyment thereof, the proper Remedy is by an Action upon the Case.

The Plaintiff in this Case hath a Privilege and a Franchise, and the Defendants have disturbed him in the Enjoyment thereof, in the most offensive Part, which is his Right of voting.

4. Where any Officer or Minister of Justice, interposed with the Execution of the Process of Law, does an Injury, an Action of the Case lies against him. If the Sheriff will not execute a Writ by arresting the Party-Defendant, or taking his Goods, the Party shall have his Action upon the Case, because he refused to do his Duty, to the Plaintiff's Damage.

The Precept which the Defendants received from the Sheriff in this Case was founded upon the King's Writ, and the Defendants are commanded to cause two Burgesses to be elected for the Borough of *Alisbury*, of which there are to give Notice, and to admit every one who hath a Vote to make use of it, if they refuse any Man to vote who hath a Right, they act contrary to the Duty of their Office.

It was objected, That it did not appear that the Persons for whom the Plaintiff voted were elected, nor that they would have been elected, if his Vote had been admitted.

The Answer is, That it is not material whether the Person for whom the Plaintiff voted was chosen, or would have been chosen, if his Vote had been taken; for Rights and Privileges are to give him Suffrage, as to be a Party in the Election, or to be excluded from it, he is wronged, though the Persons for whom he would have given his Vote were elected.

The Right of Action must accrue upon the Refusal of the Vote, and is never to be made better or worse by the Return, which is a Matter of *fact* facts.

It was said in the signing the Case, That the Plaintiff had no Damages; or at least, that there was no such Injury or Damage done to him as would support an Action.

The Answer to that is, That the Law will never imagine any such thing as *Injuria sine Damno*. Every Injury imports Damage in the Nature of it. If a Man pick a Lock, and come into an House without the Consent of the Owner, perhaps there is no pecuniary Damage done to the Value of a Farthing, yet the Owner shall have an Action against him, and recover Damages for the Invasion of his Possession and Property.

There are many Cases of the same Nature, which have been determined upon this Ground. In the Case between *Stearns and Winer, 24 Car. II. in Com. Bux.* (see *Feast's full Part. p. 260.*) and afterwards in *Bar. Reg.* The Plaintiff *Yewer*, amongst others, bid to be one of the Bridge-Masters of *London-Bridge*, which Office was to be elected by a Common-Hall of the City of *London*; The Question was, Who had the greatest Number of Votes? The Plaintiff demanded the Poll, and the defendant, being then Lord Mayor of *London*, refused it. It was adjudged, That the Action was maintainable for refusing the Poll, because every Candidate has a Right to have it, and though perhaps if the Poll had been granted to the Plaintiff in that Action, it might have been against him, yet the Demand of that Right was a *good* *Good* of Action.

Upon the same Reason, the Case in *11. 118.* was determined; and also the Case of *Hart and Denman, 2 Cr. 478.* *2 Roll. 11.*

It is apparent by what has been said, That no Person in this present Case hath been injured, in being denied his Right, and no good Reason can be assigned that he suffers this Case, as to make it differ from other Cases; though to that Purpose several Reasons were urged and insisted upon. As first, that this would be the Destruction of many Actions.

If that be so, there is the greater Reason to support this Action, to punish the many Writings that have been sent, which will prevent any more of the like Nature. If Officers of Boroughs against them ought to be advanced. If other Officers of Boroughs have here, or shall be guilty of such like Misconducts as these Defendants have been, it is fit they should be liable, as their Defendants are, to make Satisfaction. If one Man be beat and imprisoned, it is any Objection

Objection against his having an Action, because all others who shall be so evilly treated as he hath been, shall have the like Remedies? The only Means to hinder Complainants that will soon become frequent and that these Officers of Burroughs and Corporations, who so oft make Cause that they are obnoxious to the Law, and that their Parties must make Satisfaction to all whom they shall injure in this Manner. It is true, if one Adversary tends to the Injury of many Persons be committed, on one Person injured shall be allowed to have an Action, because the redress will have the same. *Gr. 3. Rep. 2. Wilkins's Case, 1 Cr. 665. Plowd. 701. Herlesley, 1 Cr. 11.* In the Cafe of not making Divine Service in a Chapel of a Manor to the Lord and Tenant, or the Hoppling of a Lane or Common-way, because the Defendant for one Adversary would have a Multitude of Suits against him, the Injury being against a Multitude: But the Redress of every Vote is a distinct Adversary. The Party grieved, whose Vote was denied, can only bring an Action for the Refusal, the others, whose Votes were admitted, are not concerned. And if an Officer abuses an hundred, who have a Right, there are a hundred several Writs, for which he ought to be liable to as many several Actions. As if a Man will make a his Bailiffs to drag Strangers, and to sell him a hundred French Men, he must make Satisfaction to them all. But though this is so far from being an Objection, that it is a Blessing, it is still more to support the Action: For if the Mayor or Bailiff of a Burroughs refuse to give a Man to reside Men who have Vows, he can easily make a Majority to vote on his side; and thus, What will become of the Officers? The Officer will return him that is elected by a Majority of his own making, by excluding the Votes of others that have Right.

This would encourage Officers to be partial and corrupt, and to return divers Persons to be elected in that Manner, who at least must have Possession of Seats in the House of Commons for some time, and give Votes in the making of Laws, and imposing of Taxes, until the Right of Election be done out.

And though upon hearing the Cause in the House of Commons, this Matter may be set right at last, yet, what can compensate for the Mischief that may be done to the Kingdom in the mean time, by the Votes of them, who shall be partially returned, and are not the Representatives of the People of the Place who are so chafed?

Besides, the aforementioned Rule against multiplying Actions is confined to such Acts where there is another Remedy to be had; but where there is no other Remedy but an Action, the Wrong-doer must answer to as many several Actions as there are Persons injured. Suppose a Man will plough up the Ground in which a hundred Persons have a Common, he must answer all their Actions. If the Inhabitants of a Town have a common Watering-place, and a Stranger stops the Current, whereby the Water is diverted, every Inhabitant shall have his Action, because there is no other Remedy.

The several Plaintiff in this Cause has no other Remedy besides this Action, no Indemnity here, because it is a personal Wrong to the Party, and so Wrong to the Publick, but only in the Consequence of it, as an evil Example, which tends to the Encouragement of other such Officers to commit the like Transgressions. Nor is there any Danger to an honest Officer, that means to do his Duty, for where there is a real Doubt touching the Parties Right of Voting, and the Officer makes use of the best Means to be informed, and it is plain his Malice arose from the Difficulty of the Cafe, and not from any malicious or partial Design, so the Jury will find an Officer guilty in such a Cafe, who can say he did not think them to do it, for it is the Word and the Malice that induces the Party to the Action: In this Cafe, the Defendants knew the Plaintiff to be a Burroughs, and yet transgressed and maliciously hindered him from his Right of voting; and Justice may require that such an obstinate and unjust malicious Officer should not escape with Impunity.

That the Officer is only mischievous in this Cafe, and not a Judge, nor acting in a Judicial Capacity, is most plain; his Business is only to execute the Precept, to assemble the Electors to make the Election, by receiving their Votes, computing their Numbers, declaring the Election, and returning the Persons elected: The Sheriff, or other Officer of a Burroughs, is put to as much Difficulty in this Cafe, but what is absolutely necessary in all Cases. If an Election be against a Man's Goods, the Sheriff must, at his Peril, take Notice what Goods a Man has.

Another Objection was made in respect to the Novelty of the Action; it was said, Never any such Action was brought.

In Answer to this Objection, it may be said, That probably there have not been many Occasions given for bringing such Suits. It is to be hoped, that very few have ever been so imprudent, as to dare to make an obstinate and malicious Refusal of an undoubted Vote. If the Cafe has happened before, perhaps the Party, out of Consideration that only small Damages were to be expected, might be discouraged, and think it better to acquiesce. And it is probable, the ill-governed Officer would be at least so cautious as to refuse the Votes of such Persons only as he thought, by reason of the Meanness of their Circumstances, were unable to moderate their Right.

It is not every one that has such a true English Spirit as the Plaintiff, who could not sit down meekly under a Wrong done to him in one of the most valuable Privileges of an Englishman. It is not the Novelty of the Action that can be urged against it, if it can be supported by the old Grounds and Principles of Law: The Ground of Law is plain, certain, and indeed universal, that where any Man is injured in his Right, by being either hindered in, or deprived of, the Enjoyment thereof, the Law gives him an Action to recover himself.

The Cafe of Hunt and Dunscombe, which was, 14 Jac. 1. *See Den. 1618.* of an Action by the Landlord against the Tenant, for hindering him from searching his House to see whether it was in Repair, was never brought before that time; and that of Turner and Starling was not brought till 23 Car. II.

The Law of England is not confined to particular Precedents and Cases, but extends in the Reason of them; which is much more extensive than the Circumstance of this or that Cafe. *Ratio Legis est Aequitas Legis; & ubi aequitas Ratio, ibi idem Jus*, are known Maxims. Vol. VII.

An Action against the Master of a Ship, for that the Ship, lying in the River of Thames, was robbed, was maintained upon the same Reason as against a common Carrier; yet such an Action was never known until 23 Car. II. in the Cafe of Ashby and Star. 1 Cr. 15. *June 23. de re 323. Star and Gr. 120.* an Action of the Cafe was brought for maliciously, and without any probable Cause, hindering the Plaintiff of High-Treason: This was the first Action that was ever brought in such a Cafe; and yet it was adjudged maintainable upon the same Reason as upon a malicious Indictment of Felony. 2 *See 23. Henry and Bull.* an Action of the Cafe was brought against the Mayor of a Town, for refusing the Plaintiff to give his Vote at the Choice of a new Mayor, and there was one very Scriptural maxim, but that the Action did not lie, though that was the full Proceeding.

It is granted, That a Freeman who hath a Right to give his Vote for the Choice of a Mayor be denied his Vote, he may maintain an Action upon the Cafe.

There can be no difference between that Cafe and this, unless it can be supposed that the Right to vote at the Election of a Mayor is of higher Privilege in the Eye of the Law, than a Right to elect Members to serve in the House of Commons.

This Action is not only founded upon the Reason of the Common Law, but it hath the Sanction of an Act of Parliament, viz. the Statute of 12 Will. 3. cap. 24. which says, That whosoever from thenceforth shall refuse to choose, that is to say, a Cafe of this kind, and in a Cafe of this kind, and refusing his Remedy, more is found, the Clerk of the Common Hall shall in making a Return, and by Consent of Men learned in the Law, a Writ shall be made, by which it should appear that the King's Court might find a remedy for such a Complaint.

The Objection now insisted on was, That this is a Matter relating to Parliaments, and ought to be determined by the Law and Custom of Parliaments; and for that Reason it was cognizable in the Queen's Courts.

In Answer to this Objection, it was shewed, first, That this Cafe is proper in the Nature of it, to be determined in the Queen's Courts.

2. There is no other Provision made for the Plaintiff, who is highly injured in his Right, but by bringing his Action in the Courts of Law, that have Power to determine of Men's Lives, Liberties and Properties.

First, The Cafe in the Nature of it is proper for the Queen's Courts. This will be apparent, if the several Rights of electing Members to serve in the House of Commons be considered.

The Right of choosing Knights of the Shire is founded upon the Electors of the Freehold, Matters of Freehold are determinable originally and primarily in the Queen's Court, by the Rules and Methods of the Common Law, by a Jury sworn and by the Evidence of Witnesses upon Oath: And as the Right of the Freehold is determinable there, so are all Branches, Rights and Advantages depending thereupon, or belonging thereto.

If a Freeholder's Voice be refused by a Sheriff, what is it that should hinder the Queen's Court from trying and determining this Matter, like all other Questions of Freehold, by a Jury, upon the Oaths of Witnesses, or Evidence in Writing, whether the Plaintiff that supposes himself wronged was a Freeholder, or no?

The Right of choosing Citizens and Burgesses depends either upon Precedents or Customs, or upon Letters Patents; these are also primarily and originally cognizable by the Queen's Courts; Customs and Precedents are triable by the Country, that is, by a Jury of Twelve Men of the County where the Custom is alleged to be. This is known Law in all Cases without Exception.

And as to Letters Patents, if pleaded specially, the Court must judge of them; and if either Party conceives the Court both judged against, he hath his Remedy by Writ of Error, till at last it comes what it will receive a final Judgment. So that every Right which an Elector can have in proper for the Determination of the Queen's Courts. There are various Ways of Election at different Boroughs, but they all depend upon Customs or Customs; and therefore are not more difficult to determine than other Privileges or Liberties, which depend upon the same Foundation.

And whereas it was said, That by a late Act of Parliament in the 12 of 2 W. III. the last Determination of the House of Commons concerning the Right of Elections is to be pursued, it amounts to no more than this, That the Officer who is to make the Return, is to take Care to return him to be elected, who is chosen by a Majority of Electors qualified according to the last Determination of the House of Commons; if he does so, he incurs no Danger, he is not liable to an Action; but the House of Commons itself is not bound by that Rule. Now suppose the Officer will deny a Man a Vote, who, according to the last Determination there, ought to have one, and thus the Officer did well know, what it is that hinders him that had Right according to that Determination, from bringing his Action against the Officer as he hath injured him? It cannot be that the Act of Parliament, for the Queen's Courts are by Law the first and original Examiners of the Statutes of this Realm.

But secondly, There is no other Court of Jurisdiction appointed by the Law of England for determining the Right, and repairing the Injury, but the Courts of Westminster.

It is a general Rule, that whoever impeaches the Jurisdiction of one Court, must insinuate some other Court to have a Jurisdiction of that Cause; but that is impossible to be done in this Cafe.

It was said, that the Determination of the Right of Elections of Members to serve in Parliament, is the proper Business of the House of Commons, which they would be always very jealous of; and that Jurisdiction of them is uncontroverted. That they exercise a great Jurisdiction in that Matter, for they oblige the Officer to alter his Return according to their Judgment, and that they cannot judge of the Right of Elections, without determining the Right of the Electors; and if Electors were at Liberty to prosecute Suits touching the Right of giving Votes in other Courts, there might be dangerous Judgments, which would make

more a Cause, and be disseizable to the House of Commons, and that the first is an Action and a Breach of the Privilege.

As to the second, the Answer was, that it is an Action. It was admitted, That the House of Commons is a Corporation in determining the Right of Election of their own Members; and though the Time may be assign'd, when that Right is exercis'd in another Place, yet there has been a Usage long enough to hinder that Point from being drawn in Question, especially as the Election given to a Member by the Act made in the Seventh Year of King James's Reign.

But this it is true, That the Merit of the Election of a Member be a proper Subject for the House of Commons to judge of, because they only give the proper and most effectual Remedy, by excluding the Elector, and giving a Person of the Place to him who has the Right; yet there is a great Difference between the Right of the Electors, and the Right of the Elector, the one is a Temporary Right, the Place in Parliament, the other is a Freehold, or a Franchise: Who has a Right to sit in the House of Commons may be guilty of a considerable Crime, but who has a Right to choose, is a Matter of civil Liberty, even before there is a Parliament. A Member has a Right to his Freehold, by the Common Law, and the Law having concern'd his Right of Voting in the Freehold, it is of the Nature of his Freehold, and must depend upon it. The first Law that gives him his Right, must also give him his Freehold, and any other Power that will prevent him from enjoying his Right of vote, may as well prevent him from voting, as it shall prevent him from voting.

To say the Plaintiff, in this Case, may appeal to the House of Commons, is not sufficient, unless preceded by a return to the Elector of any County or Borough, and compliance to the House of Commons, that he was deserv'd of his Vote, and desire them to return to him the particular Right, namely, first of choice who have Right to choose in a Borough, or a County, that Persons have been return'd by the Officers who were not duly elected, as being an Injury done to the whole Community at the Borough, to have a Person without Right sit there, whose Representative, but this is only to bring the Merit of the Election in Question, of which that House hath Cognizance, and therefore, as incident and necessary thereto, they may try the Right of Electors, which of them, by Custom, or Statute, have Votes; but this is no more than all Courts have. In the Ecclesiastical Courts, which proceed according to the Civil Law, if the Suit be originally proper for their Jurisdiction, they have Power to determine a Cause touch'd therein, so if Letters Patent, or Conveyances of Land, come in Question, though given to a Person, yet determinable in the Courts of Common Law. Maturity of age, and the Jurisdiction of the Ecclesiastical Courts, may be a Qualification as to the temporal and real Parties in their Lifetime, or upon Death or Bedridden, it shall be try'd and determin'd there. But when an Action is brought by a Man and Woman, supposing her to be his Wife, if the Defendant pleads in Abatement, so that they were not married, it shall be try'd by a Jury where the Action was brought, for if any one's Title to Land depends on a Marriage, an Action brought to try the Title, the Marriage may be determin'd by a Jury. This shows plainly, That because the House of Commons try determine who are Electors, and who are not, incidentally, and as far only, as it is necessary to try the Right of the Election, it doth not follow, that when the Right of Election is not in Question, they carry the Right of an Elector.

When the Right of the Cause is examin'd in the House of Commons, it is in order to determine which Person hath the Right to join with them in the making of Laws, and other publick business; and in order to the determining this Point, the House of Commons must judge of the Right of Electors, they do it only to this Purpose. But the Courts of Law judge of an Elector's Right wholly to another End, as it is a legal Right, to admit that, and to repair in Damages the Elector who is wrongfully hinder'd from exercising it. This is what the House of Commons cannot do, not in this Day, nor were ever any Applications made to them to do so, and it may be reasonably suppos'd they will not now begin to take it upon them.

It commonly takes up a great Part of the Time of a Session, to determine the Cases of Electors, before they can be sure the House is compos'd of such as have a Right to sit; but should they once pretend to take Cognizance of particular Men's Complaints, in order to decide the Rights of Electors, it would be impossible for them to have any Leisure to employ themselves about the Affairs of *Ultima Regni Regni*, the Safety and Defence of the Kingdoms, for which the Word calls them together. It is granted, That the deciding of the Right of Election is a Matter of great Weight, and is consequently concern'd the Lives and Liberties of the Subjects of England; but the Law hath provided a proper Remedy to be pursued in the ordinary Methods of Justice, a Remedy that is adequate, where Damages may be recover'd. The Plaintiff, in this Case, knew he had a Right by Law to give his Vote, and when he found himself deprived of it, he resorts to the Law for his Remedy. And it is probable, most of the Electors of England will be of his Mind, and think it for their Interest to resort to the Courts of Westminster-Hall, for affording this great Right of theirs upon Occasion, when they may prove their Claim by Witnesses upon Oath, and have their Damages assign'd by the Courtmen duly sworn, rather of which can be done, if they are to seek for a Remedy in the House of Commons.

When a Man is injured, if he cannot bring his Action to recover the Thing which he hath lost by the Injury, the Law will always give him Damages in Lieu thereof.

It was said in the Debate of this Case, That Instances were to be given, where the Party injured did not recover Damages; as in Cases where one has a Right of Preferential, and is disturb'd, he could not recover Damages at the Common Law, and that was resemble'd to the Right of an Elector, which was said to be only a Right of Nomination. But the Answer to this Objection is plain, that the Law gives the Party a Remedy to recover the Preferential, the Thing that was taken from him, to which he is entitl'd by the Judgment; but in the present Case there is no Possibility for the Plaintiff to recover the Thing he has lost, which

was his Vote at the Election, for that Election is over, and can never be had again, in which the Plaintiff cannot possibly have any Reparation, and therefore in Damages, and this Sort of Reparation the House of Commons cannot give him.

If the Plaintiff, and all other injured Electors, should be oblig'd to go to the House of Commons for Satisfaction, it may be reasonably suppos'd, that the first must be put off till before it could come to his Turn to have his Cause decid'd. What would be the Consequence of this? If the Plaintiff it self be that by without Remedy, Would not the Law be notoriously defective? And yet none will say, that another Parliament did ever take Cognizance of any Injury done upon Account of an Election as a breach of the Privilege. But yet it is true, that the House of Commons will determine it, when it shall think it worth the House of Commons to engage in it. For probably, the reason, why the House of Commons did not take Cognizance of that which was before them, and which the Plaintiff did not long enough to discuss.

As to what was object'd, that the first Matter may come in Question in the House of Commons, where it may be determin'd, that the Plaintiff hath no Right, for that great Objection would not have those different Judgments in different Courts, it is no more than what may happen every Day in *Highgate Adm.* where the first Court may be of various Opinion upon the same Question, and yet so there is sent to the Publick; nay, this is no more than happens often in the House of Commons, when the Right of Election on the same Point, is decided different Ways in different Parliaments, and they do not think themselves dishonour'd by it.

The Certainty of Judgment is not more necessary for the House of Commons, than for a single Judge, as in the case of an individual Election, as in the case of the House of Commons, where the Right of Election is in question, or where the Right of Election is the Basis of a great Cause, whether all the Members, or those under a particular Qualification, or whether the whole Community, or a select Number bear Votes, and all these are but Ways and Means to determine the Right of Election.

If the House of Commons judge the Right of a particular Elector at any Time, it is only for the sake, so far as it relates to the particular Case before them; but surely the House is not so stupid, the Elector's Privilege is fully consider'd thereby, because he is no Party to that Suit, his Right cannot be then in Question originally, but consequentially, as a Cause brought between other Persons, to which he is no Party, and cannot be grievous to right Reason, for the Privilege of Law, for a Man's Right is not essentially determin'd in a Court between other Parties.

And after all, Where is the Damage to the Publick, if there should be a Variation in the Determination of the House of Commons, and the Courts of *Highgate*? It is not impossible, in the Name of *Theory*, for the Courts of Law have great Advantages which the House of Commons want, they want the Help of Juries, and the Power of giving Oaths; and they ought not to be disturb'd with their Elections, if they resort to Courts provided with these Powers for asserting their Right of Elections, especially when it is consider'd, that the Parties whose Pretensions the House of Commons approves of, will sit there, which is all they are concern'd in: They are the Electors, and it would be strange if that should move them to challenge the Power of deciding the Rights of their Electors, which is indeed to chide their Electors.

It was said as a great Argument against the maintaining this Action, That it had been adjudg'd in the Case of *Mr. Osborn*, in the 33d Year of King Charles the Second, (second Post. 37.) That no Action did lie at Common Law for the Return of a Member to sit in Parliament; and that in the Case of *Barnardiston and Brown*, it was adjudg'd the Candidate could not maintain an Action against the Sheriff for a double Return, and if the Person elected to serve in Parliament cannot maintain an Action against the Officer, it was argu'd, a *foruam*, that the Person electing, who perhaps is but a Clerk, ought not to be allowed to have such an Action.

It was answer'd, That the Law of England has no respect to Persons; if an Elector be a Coffer, he is a Freeman of England, and has that great Privilege belonging to him, as he is enjoy'd in Parliament. It was remembered, with what great Variety of Opinion among the Judges that Case of *Sir Samuel Barnardiston* was determin'd, and what an Alarm that Judgment gave to the House of Commons, in such a Degree, that in the Session of Parliament, 1693, a Committee was appointed to enquire into it as a Grievance. And it was observ'd, That the great Design of the Act of Parliament made in the 15th Year of the last King (which was often mention'd in the Debate of this Case to other Purposes), was to cure many Inconveniences arising from that Judgment, and the Judgment in *Mr. Osborn's* Case, which they follow'd, and was judg'd upon the Authority of it. But there is no Reason to be drawn from these Cases and the Case of an Elector. In *Barnardiston's* Case of a double Return of Members, the Reason on which the Judgment was found, was, That a double Return was no Return which the Law took Notice of, but was only allowed of by the Custom of Parliament. When an Officer who doubts, makes a double Return, he is subject to the Judgment of the House of Commons; and if that House allows of such a Return, as they had often done, it would be hard the Law should subject a Man as a Justice of the Peace, to the Determination of those who have a Jurisdiction of the Matter, and approve the Manner of such a Return.

In the other Case of a false Return of a Member, several Reasons may be assign'd for the Judgment, which are not applicable to the Case of an Elector, perhaps it might be, because such a Return is a manifest Injury to every one of the Electors (though principally to the Candidate), and therefore it might fall within the Reason of *Wickham's* Case above mention'd, That every Elector might feel him, and therefore none of them severally can maintain the Action. But there is another Reason very obvious, because the Candidate has a proper Remedy to recover his Place, from which he is excluded by the false Return; the Right of Election is cognizable in the House of Commons, there he will

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them had been several new Admons brought by John Paty, John Ovis, John Paton, Junior, and Henry Boffe, and proferred by the said Robert Alder, against the Constables of *Aplebury*, in Breach of the Privilege of this House:

Ordered,

That the Matter of the said Complaint be also heard at the Bar of this House upon *Tuesday* Sevennight.

Ordered,

That the said John Paty, John Ovis, John Paton, Junior, and Henry Boffe, do attend this House upon *Tuesday* sevennight.

Ordered,

That Copies of the Original Declarations in the said Admons be laid before this House.

Februari 24 die Novembrii, 1704.

Ordered,

That *Daniel Harris*, a Plaintiff in one of the Admons brought against the Constables of *Aplebury*, of which Complaint was made to the House *Yesterday*, do attend this House upon *Tuesday* Sevennight.

Martii 5 die Decembrii, 1704.

The Orders of the Day being read for the Hearing the Matter of the Complaints of several Breaches of Privileges committed by Robert Alder, John Paty, John Ovis, John Paton, Junior, Henry Boffe, and Daniel Harris, and for the attending this House: The Sergeant at Arms was called upon, to give an Account of what had been done for the Summoning of them; and he requested the House, that his Messenger had been at *Aplebury*, and left a Copy of the Order at Mr. Alder's House, and at his Chamber in *Thames-Street*, but that he does not attend; but that all the other Persons had been summoned, and do attend.

And thereupon, Mr. *Arthur Crake* was called for, and brought in with the Mace to the Bar, who said:

That he was Attorney for the late Constables of *Aplebury* in five several Admons, at the several Suits of John Paty, John Ovis, John Paton, Junior, Henry Boffe, and Daniel Harris: And that he did serve Mr. Robert Alder, the 6th of *March* last, with the Resolutions of this House of the last Session of Parliament, relating to the Proceedings in the Cause of *Aplebury* and *White*, and others, by giving him a Copy thereof, and showing him the Resolutions signed by the Clerk of this House: And that he afterwards, viz. the 10th of *June* last, had from Mr. Alder Copies of five Declarations in the said Admons, viz. one from Mr. Alder himself, and the other four sent to him by *Henry*, which Mr. Alder afterwards earned, and that he paid Mr. Alder for them all.

Which Copies of Declarations the said Mr. Crake produced to the House, together with Notice in Writing from the said Mr. Alder, the 2d of *July* last, That he would try one of the said Admons, but not the other four, at the then next Assizes.

And then he withdrew.

And the Notice was read.

And the Copy of the Declaration between Paty and *White* &c was also read, and is as followeth (a):

Paty, Ann Tertio Anno Regni.

Bacii ff. Johannes Paty queritur de Will'o White, Ric'o Talboys, Will'o Bell, & Ricardo Heydon, in Cusod' Mar' &c. pro eo, viz. quod cum vicinis sexu die Decembrii Anno Regni Dom' Will'i Tercii nuper Regis Ang' &c. duodecimo Cui' Casellari' ipsius nuper Regis apud Westm' in Com' M'ni emanavit quidam Breve ipsius nuper Regis tunc Vic' Com' Bucks pref' dicens: recitans quod &c. super Rex de sollicitudine & assensu Concilii sui pro quibdam actibus & urgens negotia mand' nuper Regem Statum & Defensionem Regni sui Ang' & Ecclesie Anglicane concernent' quodam Parlamentum fuisse apud Civitat' suam Westm' fixo die Februar' tunc prox' futuri tunc ordinavit & ibidem cum Prelatis Magnatibus & Proceribus dicti Regni sui colloquium habere & tractatum idem nuper Rex eadem tunc Vic' Com' Bucks pref' dicens: Breve precepit scribitur injungendo quod facta Proclamatione in pream' Com' suo post receptionem ejusd' Brevis tenent' de die & loco pref' dicti dices: Nihil Gladius ostendat magis solute & discretus Com' pref' & de qualibet Civitate Com' illius dices Civis & de quolibet Burgo duos Burgenses de discretibus & p'agis sufficient' ibidem & indifferenter per illos qui hujusmodi Proclamatione' interferunt iusta form' Statuti inde editi & promittit &c. y. si monita eorumdem Meliorum Civium & Burgensium sic eligend' in quolibdam Indentura' inter ipsam tunc Vic' & illos qui hujusmodi Electione' interferunt inde conficienda' licet hujusmodi eligend' potestates forent vel abbasess assensu eorum; ad dictos duos & locum venire faceret Itaque idem Meliores plures & sufficient' Fondament' pro se & Communitate Com' illius ac dicti Civis & Burgensium pro se & Communitate Civitat' & Burgensium pref' division ab ipsis habere ad faciend' & conficiend' hunc que tunc ibidem de Communi Concilio dicti Regis ipsius nuper Regis (sacrate Deo) contingerent ordinari super negotiis antedictis. Ita quod pro defectu potestatis hujusmodi sui propter improvident Electione' Meliorum Civium ac Burgensium pref' dicta negotia infra non remaneret quovismodo & Electione' illi in pream' Com' ipsius tunc Vic' facti diffinire & aperte sub Sigillis suis & Signis eorum que Electione' illi interferunt eadem nuper Regi in tant Casellari' sua ad dict' duos & locum certificent indente remittent eadem nuper Regi alteram partem Indentura' pref' edicte Brevi com' una cum Brevis illo. Quod quidem Breve postea & ante predictum factum diem Febr' in Brevis pref' memoratis facti videretur non die Decemb' Anno duodecimo sup' dicto apud Burgum de Aplebury in dicto Com' Bucks cuiusdam Roberto Woodson Arm' adtunc Vic' ejusd' Com' Bucks delibatur fuit in forma Regis exequend' Virtute ejus quidem Brevis pref' dictas Robertus Woodson Vic' Com' Bucks pref' ut prefator tunc & ibidem exisset postea & ante predicti factum diem Februar' feli' m'actimo die Decemb' Anno duodecimo sup' dicto apud Burgum de Aplebury pref' in dicto Com' Bucks fuit quidam precurrens fuit in Scriptis sub Sigillo ipsius Robertus Woodson Officii sui Vic' Com' Bucks pref' Confabulatur Burgi de Aplebury pref' dicens: (scilicet) diem & locum Parliamenti pref' tenent' perinde vis

requirit' & in eisdem mandatis dicit quid facta Proclamatione infra Burgi pref' de die & loco in eodem Precipio nuper causante ibidem & indifferenter &c. duas Burgenses Burgi illi de discretibus & p'agis sufficient' pro ipsis qui hujusmodi Proclamatione' interferunt iusta form' Statuti in talib' casib' editi & promittit & non dictos Burgens' sic electi licet potestates forent vel abbasess assensu eorum; ad dictos duos & locum venire faceret ad diem & locum, in eodem precipio recitari. Ita quod dictas Burgenses habentes plen' & sufficient' potestates pro se & Communitate tunc Burgi pref' ad faciend' & conficiend' alique tunc ibidem de Com' Concilio dicti Regni (sacrate Deo) contingerent ordinari super negotiis antedictis. Ita quod pro defectu potestatis hujusmodi potestatis aut propter improvident Electione' non Burgensium pref' dicta negotia infra non remaneret quovismodo & Electione' illi in pream' Com' ipsius tunc Vic' facti diffinire & aperte sub Sigillis suis & Signis eorum que Electione' illi interferunt eadem nuper Regi in tant Casellari' sua ad dict' duos & locum certificent indente remittent eadem nuper Regi alteram partem Indentura' pref' edicte Brevi com' una cum Brevis illo. Quod quidem Breve postea & ante predictum factum diem Febr' in Brevis pref' memoratis facti videretur non die Decemb' Anno duodecimo sup' dicto apud Burgum de Aplebury pref' in dicto Com' Bucks fuit quidam precurrens fuit in Scriptis sub Sigillo ipsius Robertus Woodson Officii sui Vic' Com' Bucks pref' Confabulatur Burgi de Aplebury pref' dicens: (scilicet) diem & locum Parliamenti pref' tenent' perinde vis

J. Tenion pro Quer.

Cash per Ja. Clerk pro Def. } Pleg' &c.

The other Declarations were:

Johnes Ovis,	Thomas Ray 1 st
Johnes Paton, Jun.	of Capshale-
Henry Boffe,	her' Burgi de
Daniel Harris,	Aplebury.

And, mutatis mutandis, were the same with the former Declarations against *White* and others (b).

Then the *Old John Paty, John Ovis, John Paton, Junior, Henry Boffe, and Daniel Harris*, were severally called in to the Bar, and examined, and then withdrew.

Resolved,

That it appears to this House, That *John Paty* of *Aplebury* has been guilty of concerning and prosecuting an Admon at Common Law against *William White*, and others, late Constables of *Aplebury*, for not allowing ag his Vote in the Election of Members to serve in Parliament, contrary to the Declarations, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

That it appears to this House, That *John Ovis* of *Aplebury* has been guilty of concerning and prosecuting an Admon at Common Law against the late Constables of *Aplebury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

Resolved,

That it appears to this House, That *John Paton, Junior*, of *Aplebury*, has been guilty of concerning and prosecuting an Admon at Common Law against the late Constables of *Aplebury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

(a) This Declaration of Paty relates to the Election of Members to serve in the Parliament called in the Tenth Year of her present Majesty's Re-22

(b) These Declarations relate to the Election of Members to serve in the Parliament called in the Fifth Year of her present Majesty's Re-23

Resolved,

Resolved, That Mr. *James Montague*, in pleading upon the Return of the *Habeas Corpus*, on behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

Ordered, That the said Mr. *James Montague* be, for the said Breach of Privilege, taken into the Custody of the Sergeant at Arms attending this House.

Resolved, That Mr. *Nicholas Lockyer*, in pleading upon the Return of the *Habeas Corpus*, on behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

Ordered, That the said Mr. *Nicholas Lockyer* be, for the said Breach of Privilege, taken into the Custody of the Sergeant at Arms attending this House.

Resolved, That Mr. *Alexander Denton*, in pleading upon the Return of the *Habeas Corpus*, on behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

Ordered, That the said Mr. *Alexander Denton* be, for the said Breach of Privilege, taken into the Custody of the Sergeant at Arms attending this House.

Resolved, That *John Poy*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Sergeant at Arms attending this House.

Ordered, That *John Ovis*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Sergeant at Arms attending this House.

Ordered, That *John Peter Jamar*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Sergeant at Arms attending this House.

Ordered, That *Henry Bagg*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Sergeant at Arms attending this House.

Ordered, That *David Horne*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Sergeant at Arms attending this House.

Ordered, That *Abu Spauld* do dissolve his Warrants for the Removal and Delivery over of the said *John Poy*, *John Ovis*, *John Peter Jamar*, *James Denton*, *David Horne*, into the Custody of the Sergeant at Arms attending this House.

Mardi 27 de Februarii, 1704.

The House calling upon the Sergeant to give an Account what he had done on Execution of his Orders of this House made Yesterday, he gave the House an Account thereof accordingly, as follows, viz.

That he had received into his Custody the five Persons which were committed to *Newgate*, this Morning, and had found Mr. *James Montague* at his own House, and taken him into his Custody; but that he showed a Protection from the House of Lords, upon the Petition of the said Persons, by which the said Mr. *Montague* and Mr. *Poy*, Mr. *Nicholas Lockyer* and Mr. *Denton*, and *William Lee* and *John Harris* (who were Yesterday ordered to be taken into Custody) were assigned Counsel and Attorneys for the said Persons, and provided by the House of Lords; and that all Officers, Sergeant at Arms, and other Persons, were thereby forbid to molest any such Person, with which *Abu Spauld* told Mr. *Montague* he would acquiesce this House.

That he had also like to have taken Mr. *Nicholas Lockyer*, but that he got out of his Chamber in the Trench, two Pair of Stairs high, at the back Window, by the help of his brothers and a Rope, and that the said *Lockyer* was also taken into Custody; but that Mr. *Poy* and Mr. *Denton*, and Mr. *Lee*, were not then found.

Ordered, That some Members be appointed to search the Journals of the House of Lords, what Proceedings have been in that House, in relation to the five Persons committed to *Newgate* for Breach of the Privilege of this House; and report the same to the House.

And some Members were appointed accordingly.

The Order of the Day being read.

Ordered, That the Consideration of his Majesty's Gracious Answer to the Address of this House of *February* last, relating to the Writ of Error therein mentioned, be adjourned till To-morrow Morning.

Mardi 28 de Februarii, 1704.

Mr. *Bowley* reported, That the Members appointed to search the Journals of the House of Lords, what Proceedings have been in that House, in relation to the five Persons committed to *Newgate* for Breach of the Privilege of this House, had searched the same accordingly, and had taken thereout what they found relating to the same; and also Copies of two Petitions of the said Persons, which he read in his Place, and afterwards delivered in at the Table, where the same were read, and are as follow, viz.

De Luna, 25 Februarii, 1704.

Upon reading the Petition of *David Horne*, *Henry Bagg*, and *John Poy*, Jun. as also the Petition of *John Poy*, and *John Ovis*, Prisoners in *Newgate*, in relation to some Proceedings for obtaining the Writs of Error, and praying (amongst other Things) the Protection of this House for their Counsel and Agents.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the said Petitioners shall be taken into Consideration To-morrow at Twelve o'Clock, and all the Lords (convened to attend) as also the Judges in Town, who are to be compared to speak to the Point, Whether a Writ of Error be a Writ of Right, or a Writ of Grace? And that the Petitioners have Notice, That when they fend to this House the Names of their Counsel and Agents they desire to be protected, they shall have the Protection of this House for them.

* Though the Commons had refused before to take Her Majesty's Answer into Consideration, yet being apprehensive lest Her Majesty should grant the Writs of Error, whereby the five delinquents might be discharged from their Imprisonment, they advised that it be removed from *Newgate*, and taken into the Custody of their Sergeant at Arms, which Order was executed at Midday, with such Circumstances of Severity and Terror, as have been seldom carried towards the greatest Offenders. *Annals of 200 Years Ago*, Vol. III. p. 289.

In pursuance of the Order of this Day made, *David Horne*, *Henry Bagg*, *John Poy*, Jun. *John Poy*, and *John Ovis*, Prisoners in *Newgate*, sent the Names of their Counsel and Agents, viz.

<i>James Montague</i> , Esq.	} Counselors at Law.
<i>Nicholas Lockyer</i> ,	
<i>Alexander Denton</i> ,	
<i>Francis Page</i> ,	
<i>William Lee</i> ,	} Attorneys at Law.
<i>John Harris</i> ,	

Whereupon,

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That *James Montague*, Esq. *Nicholas Lockyer*, *Alexander Denton*, and *Francis Page*, Counselors at Law, and *William Lee*, and *John Harris*, Attorneys at Law, shall, and they lawfully have the Protection and Privilege of this House, in the advising, applying for, and prosecuting the said Writs of Error; and that all Keepers of Prisons, and Gaolers, and all Sergeants at Arms, and other Persons whatsoever, be, and they are hereby (for, or in respect of any the Cases aforesaid) strictly prohibited from arresting, imprisoning, or otherwise detaining or molesting, or charging the said *James Montague*, Esq. *Nicholas Lockyer*, *Alexander Denton*, *Francis Page*, *William Lee*, and *John Harris*, on either of them, as they and every of them will answer the contrary to this House.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Assembled.

The humble Petition of *Daniel Horne*, *Henry Bagg*, and *John Poy*, Jun.

Sheweth,
THAT your Petitioners having a Right to vote at the Election of Members to serve in Parliament for the Borough of *Abby*, were refused their Votes, so their great Wrong and Damage.
That the Lords having given Judgment in the Case of *Abby* and *Winton*, viz. That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered to do so by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Cases.

That they have for so doing been committed to *Newgate*, by Virtue of a Warrant from the Speaker of the House of Commons.

That your Petitioners have endeavoured to obtain their Liberty by such legal Methods as by their Counsel they have been advised, without Success, so that they have been deprived of their Liberty for about Twelve Weeks, for no other Reason, but the endeavouring to pursue their legal Remedies, according to the Judgment of this Honourable House.

Wherefore your Petitioners humbly beseech your Lordships to take the Petitioners into Consideration, and to do therein as to your great Wisdoms you shall think fit.

And your Petitioners, as in Duty bound shall ever pray, &c.

Daniel Horne,
Henry Bagg,
John Poy, Jun.
Hij & Merch.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Assembled.

The humble Petition of *John Poy*, and *John Ovis*.

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That the Lords having given Judgment in the Case of *Abby* and *Winton*, viz. That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered to do so by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Cases.

That they have for so doing been committed to *Newgate*, by Virtue of Warrants from the Speaker of the House of Commons, Copies whereof are annexed.

That they did, by the Advice of their Counsel, on the 5th Day of this Instant *February*, move for their Writs of *Habeas Corpus*, directed to the Keeper of *Newgate*, to bring your Petitioners before Her Majesty's Court of *Queen's Bench*: Whereupon the said Court, viz. Mr. *Justice Pountney*, Mr. *Justice Pountney*, and Mr. *Justice Gould*, did grant the said Writs, directing the same to be made returnable on the 10th Day of *February* following, notwithstanding that your Petitioners said Counsel did insist, That the time was an unusual Return, and prejudicial to your Petitioners; on which said Day of *February*, your Petitioners Counsel did argue on their Behalf, That by Law they ought to be discharged; but by the Opinion of the said three Judges, they were remanded to the said Prison.

That your Petitioners being thereupon advised, there was a manifest Error in the said Judgment, and that they were properly releasable by bringing a Writ of Error returnable before Her Majesty in this High Court of Parliament, they did severally exhibit their Petitions to Her Majesty, setting forth the Proceedings upon the said Writs of *Habeas Corpus*; and humbly pray'd, That a Writ of Error might be granted to them respectively returnable in this High Court.

That your Petitioners have not been able as yet to obtain Her Majesty's Warrant for authorizing the Curfew to make out the said Writs of Error, as is usual in such Cases.

That

arbitrary Votes, are more applicable to this Refutation of your Lordships, which hath no one Precedent to justify it.

According to the known Laws and Usage of Parliament, it is the sole Right of the Commons of England, in Parliament assembled (except in Cases otherwise provided for by Act of Parliament), to examine and determine all Matters relating to the Right of Election of their own Members.

And, according to the known Laws and Usage of Parliament, neither the Qualification of any Elector, nor the Right of any Person elected, is examinable or determinable elsewhere, than before the Commons of England in Parliament assembled, excepting such Cases as are specially provided for by Act of Parliament.

And were it otherwise, the Mayors, Bailiffs, and other Officers, who are obliged to take the Poll at Elections, and make a Return thereupon, would be exposed to Multiplicity of Actions, vexatious Suits, and intemperate Expenses; and such Officers would be subjected to different and independent Jurisdictions, and inconsistent Determinations in the same Case, without Relief.

And the Exercise of this Power by the House of Commons is warranted by a long unbroken Possession, and confirmed by the Act that passed 7 & 8 Geo. III. Cap. 7. And the House of Commons must be owned to be the only Jurisdiction that can allow the Elector his Vote, and settle and establish the Right of it; the last Determination in this House being, by that Act of Parliament, declared to be the Binding Rule for the Right of Election in each respective Place. Nor is any Election subject either to Inquiry, or Damage, by the Officer's denying his Vote. For when the Elector hath sworn the Person he would have to represent him, his Vote is actually given, both as to his own Right and Privilege, and as it avails the Candidate in his Election; and is ever allowed, when it comes in Question in the House of Commons, whether the Officer had any Regard to it or no.

In the Beginning of the Parliament, held 28 Eliz. Mr. Speaker acquaints the House, that he had received by the Lord Chancellor Sir Majesty's Pleasure; That he was sorry the House was troubled with the Matter of determining the choosing and returning of Knights for the County of Norfolk. That it was improper for the House to meddle in it, which was proper for the Lord Chancellor, whereas the Writ issued out, and whither they were reasonable: That Sir Majesty had appointed the Lord Chancellor to confer therein with the Judges; and, upon examining the time, to set down such Course as to Justice and Right should appear.

Nov. 9. A Committee was appointed to examine and rate the Certificates of the Return of the Knights for the County of Norfolk.

And on Friday, Nov. 11. Mr. Cromwell reports the Case of the Norfolk Election very largely, in which Report are these following Resolutions:

1. That the said Writ was duly executed.
2. That it was a pernicious Precedent, that a New Writ should issue without the Order of this House.
3. That the disaffection, or judging of this, and such like Differences, only belonged to the said House.
4. That tho' the Lord Chancellor and Judges are competent Judges in their Courts, they are not so in Parliament.
5. That it should be entered in the Journal-Book of the House, That the first Election is good; and that the Knights then chosen were received and allowed as Members of the House, not out of any Respect the House had, or gave to the Lord Chancellor's Judgment therein passed, but merely by Reason of the Refutation of the House itself, by which the said Election had been approved.
6. That there should be no Challenge sent to the Lord Chancellor, nor so much as to let him know what was done therein; because it was derogatory to the Power and Privilege of the said House.

It also appears, That Sir Edward Anderson, Lord Chief Justice of the Common Pleas, was acquainted, That the Explanation and Ordering of the Cases, appeared only to the Confusion of the House of Commons, not to the Lord Chancellor and the Judges; and that they should take no Notice of their having done any thing in it.

Accordingly Mr. Farmer and Mr. Gyles were received into the House, and took the Oaths; being admitted only upon the Confusion of the House, not as allowed by the Lord Chancellor, or the Judges; and so ordered to be set down and entered by the Clerk.

And this Right of the Commons to determine their own Elections, has never been disputed since the Case of Sir Francis Gwynne, 1 Joh. 1. when the Lords would have required into the Proceedings of the House of Commons upon his Election: But the Commons then told their Lordships, "It did not stand with the Honour of the House to give Account to their Lordships of any their Proceedings or Doings."

And in the Reasons of their Proceedings in that Case, which they laid by Petition before the King, among other Things, they say, "They are a Part of the Body to make New Laws; yet, for any Matter of Privileges of their House, they are, and ever have been, a Court of Ministers, of sufficient Power to discern and determine without the Lords, as the Lords have always used to do things without them."

In which Reasons, as well as in their Apology afterwards to that Prince, the House of Commons did above a hundred Years since, so clearly, and with so much Strength of Reason, assert their Right in the Matter of the Election of their Members. The Commons think it their Duty to resist all Attempts whatsoever to invade them.

And upon this Occasion it may not be improper to cite the Opinion of the House of Commons had of the Judges intermeddling in Matters of their Elections, as they have delivered it in the aforesaid Apology, in their Words, viz.

Neither thought we that the Judges Opinions (which yet in due Place we greatly reverence, being delivered with the Common Law, which extends only to inferior and standing Courts, ought to bring any Prejudice to this High Court of Parliament, whose Power, being above the Law, is not founded on the Common Laws, but they have their Rights and Privileges peculiar to themselves,

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When the Earl of Shaftsbury was Lord Chancellor, a Writ issued, during a Prorogation of Parliament, for electing Members in the room of those that were dead: The King himself was so anxious, as to the Regularity of this Proceeding, and had so much Regard to the Privileges of the House of Commons, that at the next Session of Parliament, 5 Feb. 1673, he spoke to the Commons, from the Throne, in these Words:

One Thing I forgot to mention, which happened during this Prorogation: I did give Orders for the issuing some Writs for the Election of Members instead of those that are dead, that the House might be full at their Meeting: And I am mistaken, if this be not according to former Proceedings. But I desire you will not fall to other Business, till you have examined that Particular; and I doubt not but Precedents will justify what is done: I am as careful of all your Privileges, as of my own Prerogative.

February 6, 1673. The House of Commons took this Matter into Consideration; and several Precedents being cited, and the Matter at large debated, and the general Sense and Opinion of the House being, "That, during the Continuance of the High Court of Parliament, the Right and Power of issuing Writs for electing Members so late in this House, in such Places as are vacant, is in this House, when it is present per Juges ad Elections, and Returns of their Members."

Thereupon it was Resolved, "That the Writs issued since the last Session, 1670, be void; and that Mr. Speaker do issue out his Warrant to the Clerk of the Crown, to make out New Writs for such Places."

It was also resolved accordingly, "That all Elections, upon the Writs issued since the last Session, 1670, be void; and that Mr. Speaker do issue out his Warrant to the Clerk of the Crown, to make out New Writs for such Places."

No other Court than the House of Commons hath or had the Determination of the Elections, or any Continuance of such Cases, except where by Acts of Parliament directed: And such an Action as this against the last Confessors of Shaftsbury, to bring the Right of Voting in an Election in Question in the Courts of Law, is a New Invention, never heard of before: which (as New Devices in the Law are generally attended with Inconveniences and Absurdities) was plainly to subject the Election of all the Members of the House of Commons to the Determination of other Courts.

This undoubted Privilege and Jurisdiction the Commons think will warrant these Commitments; and the late Declaration (which is agreeable to, and cannot lessen their ancient Right) had never been made.

For it is the ancient and undoubted Right of the House of Commons, To exempt for Breach of Privilege: And the Influence of their commanding Petition, nor Members of the House, for Breach of Privilege, and that to any Her Majesty's Subject, are so ancient, so just, and so well known to your Lordships, that the Commons think it needless to produce them.

And it being the Privilege of the House of Commons, to have the sole Examination and Determination of all Cases relating to their Elections, as aforesaid.

It follows, That any Attempt to draw any such Cases to the Determination of any other Court, is a Breach of the Privilege of the House of Commons; for which the Person offending may be committed by the Commons.

And here we cannot but take Notice of that unreasonable, as well as unusual Intimation, whereby your Lordships endeavour to separate the Interest of the People from their Representatives in Parliament, so pretent to no Privileges, but upon their Account, and for their Benefit; as are sorry to say, they are thus severely reflected on by your Lordships, for no other Reason, but for their interposing to preserve the Rights of the People, and their Liberties, from your Lordships arbitrary Determinations.

Your Lordships Fourth Refutation is,

That every Englishman, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain a Writ of Habeas Corpus, in order to procure his Liberty by due Course of Law.

The Commons do not deny that every Englishman, who is imprisoned, by any Authority whatsoever, has an undoubted Right to apply, by his Agents or Friends, in order to procure his Liberty by due Course of Law; provided such Application be made to the proper Place, and in a proper Manner: As upon the Commitments of the House of Commons (which sometimes are not, as other Commitments, in order to bring to Trial; but are, in Cases of Breach of Privilege and Contempt, the proper Punishment of the House of Commons) the Application ought to be to that House.

The Commons are so willing to allow and encourage every Englishman to apply, by his Friends or Agents, to obtain a Writ of Habeas Corpus, in order to procure his Liberty by due Course of Law, that they have not confined any Person merely for applying, for such Writ of Habeas Corpus, even in Cases where by due Process of Law the Prisoners cannot be discharged. For the Commons must observe, that in many Cases a Prisoner cannot, upon a Writ of Habeas Corpus, obtain his Liberty; as in Cases of Commitment in Execution, or for Contempt to any Court of Record, or by Virtue of Marine Process, or the like; and in the Act of Habeas Corpus, several Cases are expressly excepted: And that no Person, committed for any Contempt, or Breach of the Privilege, by the House of Commons, can be discharged upon a Writ of Habeas Corpus, or by any other Authority than that of the House, during that Session of Parliament, is plain from the following Precedents:

23 Mar. 1 Joh. 1.

Then, the Prisoner, to be sent for hither, and to attend his Discharge from the House.

That the Prisoners committed by us, cannot be taken from us, and committed by any other.

In May 1673, the House of Commons having Resolved, That there be no Appeals in the Judgment of the Lords, from Courts of Equity; and that no Member of the House should present any Appeal from any Court of Equity, before the House of Lords, Sir James Foweraker,

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Serjeant Peck, Sir John Churchill, and Charles Porter, Esq. were committed to the Custody of the Serjeant of the House, for a Breach of Privilege, in having been on Counsel in the Bar of the House of Lords, in the Prosecution of a Cause depending upon an Appeal, wherein Mr. Dalaboy, a Member of the House of Commons, was concerned.

But the Serjeant having been by Force prevented keeping them in Custody, the Commons did, the 4th of June, 1675, acquaint the Lords, at a Conference, as followeth, viz.

We are further commended to acquaint you, That the Enlargement of the Persons imprisoned by Order of the House of Commons, by the Gentleman Usher of the Black Rod, and the Presentation, with Threats, to all Officers, and other Persons whatsoever, not to receive or detain them, is an apparent Breach of the Rights and Privileges of the House of Commons: And they have therefore caused them to be stricken into the Custody of the Serjeant at Arms, and have committed them to the Tower.

The said Council were afterwards committed to the Tower for a Breach of Privilege, and Contempt of the Authority of the House: And the House being informed, That the Lords had ordered Writs of Habeas Corpus for bringing the Counsel to the Bar of their House:

The Commons then passed the following Resolutions:

7 June, 1675.

Resolved, Nemine contradicente,
That no Person committed for Breach of Privilege by Order of this House, ought to be discharged during the Sessions of Parliament, but by Order or Warrant of this House.

Resolved, Nemine contradicente,
That the Lieutenant of the Tower, in receiving and detaining in Custody Sir John Churchill, Serjeant Peck, Serjeant Pemberton, and Mr. Porter, performed his Duty according to Law; and, for so doing, he shall have the Assistance and Protection of this House.

Resolved, Nemine contradicente,
That the Lieutenant of the Tower, in case he hath received, or shall receive any Writ, Warrant, Order, or Commandment, to remove or deliver any Person or Persons committed for Breach of Privilege, by any Order or Warrant of this House, shall not make any Return thereof, or yield any Obedience thereto, before he hath first acquainted this House, and received their Order and Directions how to proceed therein.

Ordered,
That these Resolutions be immediately sent to the Lieutenant of the Tower.

Afterwards the Lieutenant of the Tower gave the House an Account, that he had refused to deliver the Council, upon the Lords Order, signified to him by the Black Rod, because they were committed by this House: and that since he had received the Writs of this House, he had Writs of Habeas Corpus brought him, to bring the Council to the House of Lords at ten o'clock the next Morning, and humbly craved the Direction of the House what to do.

Mr. Speaker intimated to him, he should further to return the Writs, And the House came to several other Resolutions.

9 June, 1675.

Resolved, Nemine contradicente,
That no Commoner of England, committed by Order or Warrant of the House of Commons, for Breach of Privilege, or Contempt of that House, ought, without Order of that House, to be, by any Writ of Habeas Corpus, or other Authority whatsoever, made to appear, and answer, and do, and receive a Determination in the House of Peers, during the Session of Parliament wherein such Person was committed.

Resolved, Nemine contradicente,
That the Order of the House of Peers, for the issuing out of Writs of Habeas Corpus concerning Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, is Infringement and illegal; for that it is general, and expresses no particular Cause of Privilege, and commands the King's Great Seal to be put to Writs not returnable before the said House of Peers.

Resolved, Nemine contradicente,
That the Lord-Keeper be acquainted with these Resolutions, to the End that the said Writs of Habeas Corpus may be superseded, as contrary to Law and the Privileges of this House.

Resolved, Nemine contradicente,
That a Message be sent to the Lords, to acquaint them, That Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, were committed by Order and Warrant of this House, for Breach of the Privileges and Contempt of the Authority of this House.

23 March, 1677.

Charles Darnley, Esq. having been committed by Order of this House, and afterwards discharged by Order of the House of Lords, without the Consent of this House:

Resolved,
That no Person committed by this House last, during the same Session, be discharged by any other Authority whatsoever.

Resolved,
That the said Charles Darnley be taken into the Custody of the Serjeant at Arms attending this House.

There are some Instances, among many others, that might be produced upon this Occasion; and the last cannot but be particularly remembered by some Noble Lords that then sat in the House of Commons, and strenuously asserted this Privilege of the Commons.

Your Lordships fifth Resolution, viz.

Resolved, That for the House of Commons to enquire or punish any Person for offering a Prisoner to prosecute a Writ of Habeas Corpus, or by Vote, or otherwise, to deter him from following, prosecuting, and pleading upon such Writ of Habeas Corpus, in behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessity

Assistance to the Prisoner, upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments by any Authority whatsoever.

The Commons take this to be another Instance of your Lordships Breach of your own Rule, your Lordships being no Judges of their Privileges, though by this Resolution you seem to make a Judgment, without having heard, and knowing what the Commons have to alledge for them.

This Attempt, therefore, in your Lordships is of dangerous Consequence, tending to a Breach of the good Understanding between the Two Houses, and of most pernicious Example. The Commons late Proceedings, in enquiring and punishing the Council that have pleaded upon the Return of the Writs of Habeas Corpus, in behalf of the Prisoners, is daily considered, is a great Instance of the Temper of the House of Commons: For this House did not interfere when the Prisoners applied to the Lord-Keeper, and the Judges, and to be bailed; and had the Lawyers thrown so much Modesty, as to have acquiesced in the Opinion of the Lord-Keeper and all the Judges, That their Prisoners were not bailable by the Statute of Habeas Corpus, the Commons had never taken any Notice of it: But they would not rest satisfied without bringing on again this Cause, and the Privileges of the Commons were, with great Commisurations of Speech, denied, and insisted in public Court, not with any Hope or Prospect of Relief of the Prisoners (who in this whole Proceeding have apparently been only the Tools of some ill-advancing Priests, that are contriving every Way to dilate the Venation of the Commons Elections), but in order to vent their new Doctrines against the Commons of England, and with a Design to overthrow their fundamental Rights. And after to wash Invenience thence to the Commons, they could do no less than declare the *Doctors, Priests, Controversers, or Affiliates, of a Proposition is voided* as, to be guilty of conspiring to make a Difference between the Two Houses of Parliament, to be Destroyers of the Power of the Kingdom, and to have undertaken, as far as in them lay, to overthrow the Rights and Privileges of the Commons of England in Parliament assembled.

And the Commons, in committing the Lawyers, have only done that Right to their Body which your Lordships have frequently practiced, in Cases of personal Privilege, where any single Member of your Lordships House is concerned.

Your Lordships last Resolution, viz.

That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (tho' as the Request of either House of Parliament) the Denial thereof being an Obstruction of Justice, contrary to Magna Charta.

The Commons shall not enter into any Consideration, whether a Writ of Error is of Right, or of Grace; they conceiving it not unusual in this Cause, in which no Writ of Error lies, nor was ever any Writ of Error brought or attempted in the like Case before; and the allowing it in such Cases would not only subject all the Privileges of the House of Commons, but the Liberties of all the People of England, to the Will and Pleasure of the House of Lords.

And when your Lordships Exercise of Jurisdiction upon Writs of Error is considered, how unaccountable in its Foundation, how inconsistent it is with our Constitution, which, in all other Respects, is the wisest and happiest in the World, to suppose the last Relief in Judicature and the Legislature to be differently placed.

And when it is considered how that Usurpation, in bearing of Appeals from Courts of Equity, to civil causes, though often denied and protested against, yet still exercised, and almost every Session of Parliament extended, is it not to be wondered, that after the Success your Lordships have had in these great Advances upon our Constitution, you should now in once make an Attempt upon the whole Frame of it, by detaching the Choice of the Commons Representatives to your Determination; for this is a necessary Consequence, from your Lordships encouraging the late Actions, and your countenancing a Writ of Error; which, if allowed upon such a Proceeding, might as well be introduced upon all Actions and Proceedings of Courts or Magistrates of Justice: And though the present Instance has been brought on under the specious Pretence of preserving Liberty, it is obvious the same will as well hold to controul the bailing and discharging Prisoners in all Cases.

And the Commons cannot but see how your Lordships are contriving, by all Methods, to bring the Determination of Liberty and Property into the Intemperate and insupportable Grip of your Lordships Jurisdiction, which would swallow up both the Prerogatives of the Crown, and the Rights and Liberties of the People; and which your Lordships must give the Commons Leave to say, they have the greater Reason to do, when they consider in what Manner it has been exercised; the *Ignominy* whereof they further, *because they hope your Lordships will reform: And they desire rather to censure the Act, than to create any new Disgrace.*

Upon the whole, the Commons hope, That, upon due Consideration of what they have said before your Lordships, you will be fully satisfied they have offered nothing in all their Proceedings, but what they are sufficiently justified in from Precedence, and the known Laws and Customs of Parliament; and that your Lordships have assumed and exercised Jurisdiction contrary to the known Laws and Customs of Parliament, and tending to the Overthrow of the Rights and Liberties of the People of England.

Resolved, That a Conference be desired with the Lords, upon the Subject Matter of the last Conference.

Ordered, That Mr. Ashley do go to the Lords, and desire the said Conference.

Monday, 7th March, 1704.

Mr. Ashley reported, That he having been at the Lords (according to the Order Yesterday) to desire a Conference upon the Subject Matter of the last Conference, the Lords return an Answer,

That they do agree to a Conference accordingly, and appoint the same presently in the Painted Chamber.

Ordered,

Ordered,
That the Managers who managed the last Conference, do manage the Conference which is to be presently with the Lords.
And the Managers went to the Conference.

And being returned,
Mr. *Brerley* reported, That they had been at the Conference, and delivered to the Lords what the House had directed.
A Message from the Lords by Sir *Robert Clifford* and Mr. *Pitt*. Mr. *Speaker*, the Lords desire a free Conference with this House To-morrow at One of the Clock, in the Painted Chamber, upon the Subject Matter of the last Conference.

Resolved,
That this House will send to the Lords an Answer by Messengers of their own.

And the Messengers were called in again; and Mr. *Speaker* acquainted them therewith.

Feast, 8 die Martii, 1704. Ann 4 Anne Regiæ.

Resolved,
That a Message be sent to the Lords, to acquaint them, That when their Lordships sent Yesterday in the Afternoon, after Three o'Clock, to deliver a free Conference upon the Subject Matter of the last Conference, the House was full sitting; but that this House will meet their Lordships at a free Conference, as their Lordships have desired, at such Time as their Lordships shall appoint, the Time named Yesterday by their Lordships being now past.

Ordered,
That Sir *Thomas Hower* do carry the said Message.

Ordered,
That the Managers who managed the last Conference, do manage the said free Conference: And some others were added to them.

Sir *Thomas Hower* reported, That he having been at the House of Lords, to deliver the Message directed by this House, he found that the Lords were full up.

The Sergeant at Arms attending this House, having acquainted the House, That he had received Two Writs of *Habeas Corpus* under the Great Seal of England, to bring before the Lord Keeper the *Bishop of James Montague*, Esq. and *Alexander Dimes*, Esq. (who are committed to his Custody by Warrants from the Speaker of this House for a Breach of Privilege).

The House again affirmed the Consideration of that Matter: And after Debate,

Resolved, That no Commoner of England, committed by the House of Commons for Breach of Privilege, or Contempt of that House, ought to be, by any Writ of *Habeas Corpus*, made to appear in any other Place, or before any other Judicature during that Session of Parliament wherein such Person was committed.

Resolved, That the Sergeant at Arms attending this House, do make no Return, or yield any Obedience to the said Writ of *Habeas Corpus*; and for such his Refusal, That he have the Protection of the House of Commons.

Resolved, That the Lord Keeper be acquainted with the said Resolutions, to the End, that the said Writs of *Habeas Corpus* may be superseded, as contrary to Law, and the Privileges of this House.

Ordered, That the Clerk of this House do acquaint the Lord Keeper of the Great Seal of England with the said Resolutions.

Feast, 9 die Martii, 1704.

The Clerk acquainted the House, That he did, pursuant to their Command last Night, wait upon the Right Honourable the Lord Keeper of the Great Seal of England, and acquaint him Lordship with the Resolutions of the House Yesterday, relating to the Writs of *Habeas Corpus*; and left the Resolutions with his Lordship.

Sir *Thomas Hower* reported, That he having been at the Lords with the Message order'd Yesterday, the Lords do return Answer, That they do agree to meet this House at a free Conference this Day, at Two o'Clock, in the Painted Chamber.

Then the Managers went to the free Conference.

And being returned,
Mr. *Brerley* reported, That the Managers appointed had met the Lords at the free Conference, which had lasted very long. And that when the Managers for the Commons took Notice of some Invasions of the House of Lords in point of Judicature, particularly as to Appeals, the Lords broke up the Conference.

Ordered, That the Managers do draw up what has passed at the Conference, and lay the same before the House with all convenient Speed.

Mortis, 12 die Martii, 1704.

Mr. *Brerley* reported, That the Managers of the free Conference with the Lords had (according to Order) drawn up what has passed at the said free Conference, which they had directed him to report to the House, which he did in his Place, and afterwards delivered in at the Clerk's Table.

Ordered, That the said Report be enter'd upon the Journals, and is as follows, viz.

That the Lords who appear'd as Managers, and spoke at this free Conference, were, the Earl of *Sunderland*, the Lord *Perrin*, the Bishop of *Salisbury*, the Lord *Holifax*, and the Lord *Wentworth*, and the Duke of *Devonshire*, Lord *Stewart*.

That the free Conference was begun by the Managers for the Lords, who said, This Conference was desired to maintain a good Correspondence between the Two Houses, which was never more necessary than at this Time.

That the delivering Resolutions at their first Conference was Parliamentary; and influenced the Resolutions, 3 Car. I. which produced the Petition of Right.

That the Lords took upon the Commons to be a great Part of the Constitution, which cannot be preserved but by doing Right to both Houses.

That every Part of the Body Politick, as well as the Body Natural, ought to be kept within due Bounds; an Example in any Member will weaken the whole.

That this Constitution is the Wonder of the World, and Glory of this Nation; 'tis founded upon Liberty, and Property: And the House of Commons hath been a great Fence and Bulwark of Liberty.

That the Lords Resolutions are very well founded, and justified by the Laws of the Land, as is their Judicature in this Cafe.

That it was proper for them to receive the Petitions, and make their Resolutions thereupon.

That the Lords are the great Court of Judicature; and when the Courts below have offered in Opinion, there has been resort to the Lords for their Judgment, as in the case of Kindred or Half-blood claiming Shares of Inheritance Estates.

That when such a Complaint comes before the Lords, they ought to give their Opinion as to the Law of the Land; and that was the Foundation of their present Resolutions.

1. That the First Resolution was, in effect, agreed to by the Commons, tho' they go off to Foreign Matters, of which the Lords take no Notice.

That the Law of the Land can be altered only by the Legislature.

2. That the Second Resolution affirms the Subjects Redress by Action at Law, &c.

That all Constitutions have reckon'd this their Safety, That every Man, from the highest to the lowest, hath the Protection of the Law.

That, according to our Constitution, the subject may contest his Right with the Crown, and upon equal Terms, with that respect which it due.

That this Resolution only affirms the Right, does not share the respective Courts, where the Redress is to be had. If the Party mistakes the Court, he is punished by Costs of Suit.

The Term of privileged Causes is new, and the Distinction unknown.

3. To support the Third Resolution, it was urged,

That the Branch of Privilege was not well grounded.

That it belongs to the Crown to make Declarations; the Commons did indeed make Ordinances; and when their Prince was murdered, they came to Declarations.

That a Law without Promulgation cannot have Force to make an Offence.

The Liberty of Men's Persons is the greatest Privilege, and not to be taken away, but in known Cases; the invading of it has broke the bulk Constitutions.

That the taking away the Liberty of one man's Person, once endanger'd the Government of Rome.

That both Houses may commit for Breach of Privilege, but cannot declare any thing to be a Privilege, without good Grounds; nor consequently make any thing a Contempt, that is not known to be so.

That Commitments or Censures have not been used upon Adverses at Law, though such Adverses have brought the Proceedings, or Privileges, of either House in Question.

That in the case of Freedom of Speech, which is the greatest Privilege, there was a Judgment in King Charles the First's Reign, in the House of short Times, against some Members, for Speeches in Parliament: That the Commons first condemn'd, and then by Conference brought it before the Lords, who came to a Resolution, That it was erroneous, and desired the Lord Keeper to bring his Writ of Error; and thereupon it was reversed by the Lords, in the Time of Charles the Second; which shews the Care the Lords had of the Commons Privileges.

That in *Saunders* and *Barnardine's* Case, the Commons did not concern themselves, only in Support of the Adverses, when in 1678 they examined the Judgment of Reversals as a Grievance.

That the Lords had not interposed in any Suits which concern'd the Proceedings of their House.

That the Earl of *Bedford* (as he was called) was, by the Lords, adjudged to be no Peer. This was examin'd in the King's Bench, where, in Abatement of an Indictment for Murder against him, as *Glorio Rex*, Esq. he pleaded his Title of an Earl; and in Avoidance of that, the Order of the Lords was replied, and was examin'd by the Court, and shall hold.

That the late Bishop of St. *David's* was prosecuted in the Spiritual Court, and depriv'd, tho' a Member of that House; and the Lords did not interpose.

That it is the Will of all Governments, to have the Law open; and that's the Difference between a Legal and Arbitrary Government.

That the Lords do not meddle with the Commons Right of determining their own Elections; they have a settled possession of it, which is a Right; If all the Rights of Subjects concerned in these Elections are to be determined there, that will bring all Questions of Freehold, and the Allowance of all Charters, and all Liberty and Property, before them.

That a Freeholder of Forty Shillings per Annum has a Right of Intestance, to which he is born; and if his Vote is denied, he is damaged, and loses the Credit of his Vote; and if he shall only come to the House of Commons, they can neither give him Damages, nor Costs of Suit.

That a Freehold cannot be determined by any Court which cannot give an Oath.

That the Precedents produced concern only the Right of determining Elections in general.

And an Adverses by an Elector, for his Right of voting, does not avoid the Election.

4. To maintain the Fourth Resolution, they said,

That it may be lawful for a Man to apply for his Liberty, whose he cannot have it.

That the Proceedings in 1679, produced as a Precedent in this Case, were upon a Matter contested between the Two Houses, and resolved differently in the Lords House: *Yaphen* and the Lieutenant of the Tower were both sent out; and the Sentence was so high, that the Parliament was prorogued, and soon after dissolved.

5. The Fifth Resolution is a Consequence of the Fourth:

That the Commitment of the Lawyers was not for Inconvenient Speech, as was insinuated at the last Conference, but for pleading upon the Return of the Writs of *Habeas Corpus*.

That in the particular Character of that whose Court call'd the Inquisition, that nobody cares appear for, or resort to a Parliam. unprovoked there, but he is left to the Mercy of that Court.

The Lawyers are not to be answerable for every thing they argue; they are to do their Duty for their Clients, and the Court is to judge of it.

6. The Commons declining the last Resolution is an agreeing it, though not so Parliamentary as it would have been to have agreed it directly.

Thus

That the *Lords* are the only proper Judges, Whether the Writ of Error lies against them.

Ye Lords answered the *Managers* for the Commons *As follows*,

That they agreed the Necessity of a good Correspondence between the Two Houses, especially at this Time of common Danger; and that the Commons had fully shewn their Desire to maintain that good Correspondence, by endeavouring to meet their *Lords* in this free Conference, about their ancient and fundamental Privileges had been called in Question, and denied by their *Lords*; and that in an extraordinary and very unparliamentary Manner.

That the Delivery of Resolutions is so far from being the only Method of Conferences, that the most usual Method has been to offer Reasons, without Resolutions; and it would be very difficult to give any Influence (before this) of either House delivering positive Resolutions at a Conference, without the Reasons, at the same Time, to support them, and that induce them to make such Resolutions.

1. That the Commons Answer to the *Lords* First Resolution is not foreign to the Subject Matter of the Conference; because the Commons comprehended the Subject Matter to be their *Lords* denying the Privileges of the Commons on the one hand, and their extending their own Jurisdiction beyond its proper Limits on the other: And therefore the Commons could not but take Notice, how far their *Lords* had transgressed in the Exercise of an unparliamentary Jurisdiction, in Contradiction to that very Rule they had laid down for the Tell of the Proceedings of the Commons, and by a neglect the Commons had directly given themselves.

That the Commons cannot create new Privileges; yet in *Cal's* 17 Resolves, fo. 63. we find, the Privilege of Parliament, either of the Upper House, or of the House of Commons, belongs to the Determination or Decision only of the Court of Parliament, for every Court hath a Right to adjudge their own Privileges, according to the Book of E. IV. Sir John Poynt's Case.

2. To their *Lords* Arguments for their Second Resolution your Managers answer'd,

That every Person injured hath a Right to seek Redress; but then that Redress must be sought in the Place where the Matter is properly cognizable.

3. To what the *Lords* offered upon the Third Resolution, your Managers answer'd, That Matters of Election do not belong to the Courts below, but only to the House of Commons, which hath been in long Possession of them: That there was an Act of Parliament made in the Time of King Henry the Sixth, to give an Admon for a false Return of Members to serve in Parliament, because no such Admon lay at Common Law, as relating to Elections.

That double Return is not being within that Statute, no Admon lay in the Courts of Common Law for making any double Return, 'till the Statute of 3 H. VIII. III.

That besides the Influence given in the Answers the Commons gave to the *Lords* Resolutions at the last Conference, this Diffinition, as to privileged Cases, is fully and undeniably warranted by the Statute made in the Fifth Year of King William and Queen Mary, entitled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; where, among other Endeavours of the late King James to subvert and extinguish the Liberties and Rights of the Kingdom, there are mentioned, *his* being the Privilege of *Electors of Members* in *Parliament*, and *Privileges in the Court of King's-Bench, for Matters and Causes only cognizable in Parliament*.

Besides, That there are privileged Cases as well as privileged Persons, against whom hence: A Prohibition, and afterwards an Attachment, lies for tarring in the Spiritual Court for a Temporal Cause determinable in the Temporal Court. There are divers Laws within this Realm, of which the Common Law is but one, as appears in *Cal's* 1. fo. 11. B. where he mentions *Law of Conscience*, *Parliamentary*, & *Law Common*, as distinct Laws.

As there are several Laws, so there are several Courts and Jurisdictions, and several Causes proper for those several Laws and several Jurisdictions: Of these the High Court of Parliament is the First; *Law of Conscience* Parliament is a great Branch of the Law of England; and many Causes are to be determined only by that Law, as appears in the *1st* fo. 23.

With such Causes as are in their Nature Parliamentary, and so determined by the Law of Parliament, the Common Law, and Common-Law Judges have nothing to do; as further appears, 4 *fo. 14, 15*, where the Expressions are very suitable to the present Controversies.

That the Persons perilling in the Prosecution of such Actions, after a Prohibition by the Commons, for that such Causes belong to their Jurisdiction, the committing them for the Breach of their Privileges in that Particular, is no more than is done by the Common Law Courts for the like Contempts, when Persons will for after a Prohibition in the Spiritual Courts: And the Commons used way to defend their Privileges against such Infrusions, has been by committing the Tools and Instruments thereof.

It is a fundamental Maxim of the Law and Custom of Parliament, which is the highest and noblest Part of the Law of England, and particularly adapted to the Preservation of the Liberties of this Kingdom, That the Two Houses are independent of one another, and sole Judges of their Rights and Privileges: That their *Lords* do advise, the Commons have a Privilege to judge of the Rights of their own Elections to one Tenant, but not to another: But if the Commons have such a Privilege to one Tenant, they must be Judges of it to all Intents and Purposes whatsoever, and being sole Judges thereof, their Judgment cannot be legally called in Question, either by Writs of *Habeas Corpus*, Writs of Error, or otherwise, in any other Court; and consequently the Proceedings in *Walsingham-Hall*, and in the House of Peers, and the Judgment given there, are all null and void, *as error non facit*.

The Commons Commitment for commencing such Actions, is no more than what they and their Predecessors have in all Times practised in Cases of Breach of Privilege.

4. In Answer to what the *Lords* had offered upon the Fourth Resolution, your Managers insisted, That Application of Friends for the Liberty of any Person imprisoned, ought to be in a proper Place, and in a

proper Manner, which in this Case ought to have been only to the House of Commons, and by the Petitioners of the Persons they had committed.

That the Proceedings in 1675 were so well grounded, that they must be Precedents to the Commons to follow at all Times upon the like Occasions.

5. To what the *Lords* offered upon the Fifth Resolution, your Managers answered;

The Locution of Speech used by the Lawyers, was only mentioned among other Particulars of the Provocations they gave the House of Commons, but they were committed for pleading upon the Return of the Writs of *Habeas Corpus*, in behalf of the Prisoners committed by the House of Commons, which the Commons (who are the only Judges of their own Privileges) take to be a great Breach of the Privilege of their House.

6. To the last Resolution your Managers insisted, That no Writ of Error lies in that Case, and that there may be Cases wherein no Writ of Error lies, as their *Lords* in Opinion in the Case of the late Bishop of St. David's, who brought his Writ of Error upon the Court's not granting him a Prohibition.

The Case of *Sir Thomas Armstrong*, mentioned by their *Lords*, was particular, in that the Commons then apprehended he was entitled to a Writ of Error within the Meaning of the Statute of Edward the Sixth.

Your Managers further urged the Necessity of the Action in the Case of *Abby and Whitt*, of which no Footprints can be found in any Book of the Law, or in any Record, although we have faithful Reports of all memorable Cases for four hundred Years past; and the Occasion of such an Action must frequently have happened.

The *Lords* themselves (when they had no Design upon the Privileges of the Commons) were in Opinion, in the Case of *Sir Samuel Barnardiston*, in the first Year of the Reign of King William, That no such Action lay; and there is no one Reason can be offered to maintain this Action, but held more strongly in the Case of *Sir Samuel Barnardiston*, as Damages, Costs, &c. And it is an absurd Diffinition to say, That in this Case the Right of Election cannot come in Question, because the determining of the Right of the Election does generally determine the Right of the Election; and almost all controverted Elections depend upon the Qualifications of the Electors.

That the Commons had shewn such a Disposition to maintain a good Correspondence with their *Lords*, though their *Lords* had, in the Case of *Abby and Whitt*, had, contrary to the Judgment of the Courts below, allowed the Action upon which the Plaintiff had taken out Execution, and levied the Money; that the Commons took no Notice of it, and were willing to let the Matter slide, which might occasion any Contest in this Time of publick Danger: But when other Actions of the like Nature were still commenced and prosecuted, whereby all Elections would be brought to the Determination of the *Lords*, or, at least, in some measure, as that the *Lords* would in effect take the Commons, and thereby the Independency of the Two Houses would be destroyed, which is the great Safety of the Constitution; then it concerned the Commons, who are the Representatives of the People, to oppose what would be so fatal to our Constitution.

The bringing Writs of *Habeas Corpus* upon the Commitments of the Commons, and a Writ of Error thereupon before the *Lords*, would bring all the Privileges of the Commons to be determined by the Judges, and afterwards by the *Lords*, upon such Writs of Error.

Nay, such Writs of Error upon every *Habeas Corpus*, would bring the Liberty of every Commoner in England to the arbitrary Disposition of the House of *Lords*.

And if a Writ of Error cannot be denied in any Case, and the *Lords* alone are to judge whether the Case be proper for a Writ of Error, then all the Queen's Revenue, all her Privileges, and all the Lives and Liberties of the People of England, will be in the Hands of the *Lords*; for every Felon, Burglar, and Traitor, will be entitled to a Writ of Error before the *Lords*; and they will have even Power of Life and Death.

And by Writs of Error and Appeals, as already exercised, they will have all our Properties; by such new-invented Actions they will have all our Elections; and by such Writs of *Habeas Corpus*, and Writs of Error thereupon, they will have all our Privileges, Liberties, and even Lives, as their Determination; who determine by Voice, with their Doors shut, and it is not certainly known who it is that hurts us.

The Novelty of those Things, and the infinite Consequences of them, is the greatest Argument in Law, That they are not of Right.

The Commons are not consenting for a small Thing, but for their All: Especially since the *Lords* have found out a way to subvert the Government, by defrauding the Money given by the Commons, which must come last of them, because the Money-bills must begin with the Commons; and if that Means they can extort Writs of Error when they never were heard of, the Commons must commit the Persons employed in all such Innovations, or else they must lose, by such Contrivances, All that they have.

In the Case of *Denial Hall*, Sir John Elliot, &c. in 1675, the Commons declared the Judgment given in 5 Car. I. to be an illegal Judgment, and against the Privilege of Parliament: And this they did of themselves, before they acquainted the *Lords* therewith.

Afterwards, because it concerned the *Lords* as well as the Commons, they impugned their Resolutions to the *Lords*, who concurred with the Commons; and the Writ of Error, which was afterwards brought at the Desire and Influence of the *Lords*, and not at all by the Desire of the Commons, they relied upon their own Resolution, That it was an illegal Judgment. *Vid.* Vol. VII. p. 123.

The *Lords*, by way of Reply, said further, That this is a Cause of Liberty and Property, and judicial Proceedings, which the Commons had endeavoured to stop.

That the Conference therefore asked by the *Lords* upon the Fundamental Rights and Liberties, was proper.

That they are the same Terms the Commons used, 3 Car. when their Liberties were attacked.

That

That the true Method of Conference is not by way of Question and Answer, but by Resolutions, which are not binding, but if the Lords are convinced by Argument, they may retract them.

That the Lords, here, may regularly take Notice of this printed Paper, when in Court, in such Declaration as all Persons are bound to take Notice of at the Bar of Commons.

That the Right of the House of Commons to determine their own Elections is not in Question, or intended to be changed, but the two Proceedings produced to support them are very much mistaken.

That the Case of Sir Francis Gooden is not fairly stated, the Word Order being omitted in the Commons Answer to the Lords Message, relating to the Commons Proceedings in this Case; which refers to a particular Order of the House of Commons, they having before determined that Election. That it is not taken Notice, that the Lords went with the Commons to the King, and were Mediators, and that at the last a new Will issued for a new Election.

That in the former Precedent, 28 Edw. the Commons have not taken Notice, That the Election was in that Case determined by the Judges.

That the Commons did not confine their Writ to return to the Judges's Case, but to the general and absolute, I have a Right to Error in Judgment, or Trial, or of Right, and not of Grace.

That by the Writ of Error, brought in the late Bishop of St. David's Case, upon a Case that is a trisubstant, and does not by the Lords, it appears, when a Record comes improperly before them, they are to judge as to its validity.

That instead of proving the Law, the Consequences are urged, which is not right arguing.

That the Question is, Whether the Queen is bound to grant a Writ of Error? If she is, it will be void for any Body of Men to interpose with the Crown, and stop it to hinder that Writ, which, by the Opinion of the Judges, she ought to give.

She is obliged too, by *Magna Charta*: *Nullo regalium, nulli deferamus, vel levemus*.

That whether a Writ of Error lies or not, will afterwards be proper for the Judgment of this Court, as 'tis of any other Courts where a Writ of Error is returnable.

That the Commons are very safe, and may depend the Lords will be as tender of their Privileges as of their own.

That whatever Privileges accrue to the Commons, will accrue to the Lords also: If the Commissioners of the Commons are free from the Cognizance of the Courts below, those of the Lords will be so too.

That 3 Cor. the Commons maintained, That the Measure of Persons being laid, is not from the Authority which committed, but from the Cause of Commitment.

Your Managers further observed, This Subject Matter was scarce ever in Conference before between the Lords and Commons, and will seem strange to Posterity.

That the Lords Concern for Liberty and Property cannot be equal with that of the Commons; for the Lords Liberty is better secured, and consequently their Property too, than that of the Commons.

The Lords are less interested in the Event of this Conference than the Commons, who are the Trustees of those who sent them, and are bound in Duty and oath to preserve their Liberty and Property. And having but a limited Duration, which is at this Time near expiring, it is not to be imagined they will infringe what they are entrusted with, and to such concerned to maintain; and that for notoriously, that the Lords should comply, who are much less concerned, but more to be feared, as their Designs, as well as Honour, may be Hereditary.

At the full Conference, six Resolutions were delivered as Matters of undoubted Truth and Law.

And the Proceedings of the Commons are to be tried by these Rules, though they have no Parties in the making them.

1. The Writ is not to be excepted against, only as an Information, if the Commons had pleaded the contrary which they are not conscious of.

2. To the second, There are many Injuries for which no Action at Law is allowed; as it is a Judge gives a wrong Judgment, the Benefits by Writ of Error is no satisfaction for the Damages.

3. In other Acts of a Judge, or Court of Justice, as denying a Writ of Habeas Corpus, or Bail, no Action lies, but upon the late Statute.

That the Lordships, not making any Distinction between Matters and Causes which were exempt from the Cognizance of the Common Law Courts, as being solely cognizable in Parliament, and Causes which were exempt only in respect of the Persons sued, being entitled to Privilege of Parliament, seems to be the Occasion of the Mistakes their Lordships have entertained in relation to the Proceedings of the Commons: That the House of Commons is a Court of Judicature in many respects, and as such, hath, as well as other Courts, Causes proper and peculiar to its Jurisdiction.

That the Law-Books, and particularly the Lord Coke, speaks of Matters of Parliament which are not to be determined by the Common Law, but according to the Law and Usage of Parliament.

That all Matters which are done in Parliament, may be questioned and determined there, and not elsewhere, has been heretofore asserted by the House of Commons, as their ancient and undoubted Right, and has been allowed both by the Judges of Law, and by their Lordships. And when the Judges on the King's Bench, in the fifth Year of King Charles the Fifth, upon an Information against Sir John Elliot, Mr. Holt, and others, held, That Matters done in the House of Commons, if not done in a Parliamentary Way, may be questioned elsewhere, that Judgment was afterwards reversed in Parliament.

That their Lordships allowed, all Matters relating to Elections ought to be determined solely by the Commons: And though their Lordships attempted to make a Distinction between the Right of Elections, and the Right of Elections, yet their Lordships cannot find Room for such a Distinction, unless they would say, the Right and Qualification of the Electors was a Matter not relating to Elections.

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That by the Parliament Roll, in Rich. II. it appears a Petition was exhibited by Parliament, in Answer by the King, That the Privilege and Privilege of Parliament should be enjoyed by the Parliament, and not by any other Courts, nor by Common Law; and therefore, when the Judges have been asked how they are in Matters of Privilege, it they are answered, That the Privilege of Parliament ought to be observed there, and not by any other, as they did in the Case of Thorpe, Speaker of the House of Commons, 31 H. VI.

That their Masters are not exempt from the Determination of other Courts, in respect of the Part in sued, for then they might be drawn in there after the Time of Privilege was expired; whereas it is evident, that such Matters and Causes cannot be determined in any other Court, as that of the Parliament, after the Expiration of the Time of Privilege, any more than before.

That these Matters are determinable in Parliament, although the Persons prosecuted are not entitled to the Privilege of Parliament, as appears by many Instances, particularly by that of the Mayor of London, in the Eighth Year of Queen Elizabeth, who, for taking Four Pence to get a Petition which a Burgess for that Borough, was fined and imprisoned by the House of Commons, although he was not a Person entitled to the Privilege of Parliament.

That it may as well be said, That an Action is maintainable for releasing any of the Lords a Right of Precedency in Parliament; yet it cannot be imagined the House of Peers would be content the same should be brought in Question in any the Courts of Law, and decided by a Jury of Commoners.

But the same Arguments will hold for maintaining such an Action, to recover Damages: for releasing Precedency to him that has Right to it, as for maintaining an Action to recover Damages for taking or taking upon upon the Poll the Vote of an Elector: For it may with equal Justice be said in both Cases, That the Plaintiff hath a Right, That the Defendant released him that Right. That such Release is an Injury, and consequently ought to be repaired in Damages.

That to the Third Resolution, the Commons are not accountable to the House of Lords, or any other Court, for what they do in an Matter.

Their Privileges being Rights peculiar to that House, which is their Privilege, and the Breach of it, is only examinable, and to be judged by themselves.

That the Courts of Westminster-Hall have that Deference for each other's Judgment, that in Commitments for Contempt, or Misbehaviour, which are frequent every Term, another Court, though superior, will not re-arrest the Prisoner by Habeas Corpus, or otherwise, but he shall address to the Court which committed him, much less can an inferior Court do it.

The House of Commons therefore, expelled the same Deference from their Courts which they pay each other, and ally from the Lords House what is due to a co-ordinate Jurisdiction: The Commons taking themselves to be superior to any Court in Westminster-Hall, and not allowing any Court in this Government to be their Superior, no more than their Predecessors have done.

The Commons do not extend by their Declaration to make a new Law, but barely declare what the Law was, and prohibit any Person to act contrary.

The Term Declaration is not peculiar to the Prince, but is a familiar Term at Westminster-Hall.

That the Commons are not for adding contrary to the Vote of the Commons, but for adding contrary to Law, after the Law was declared to them by that Declaration, and they thereby prohibited to proceed in that Court.

To set this in a true Light, if a Man fares in the Admiralty, or Ecclesiastical Court, for a Matter properly cognizable at Common Law, the Party shall not need to be committed for commencing that Suit; but if the Defendant in such Suit obtains a Prohibition, which declares what the Law is, and gives the Plaintiff Notice that his Suit is contrary to Law, and therefore prohibits him to proceed any further therein; if he does proceed, an Attachment will issue to arrest him for breach of the Prohibition, as it is in fact, though in Truth, it is for adding contrary to Law, after he had been advertised what the Law was.

Now there is no Difference between the Declaration complained of, and the Prohibition mentioned, but in the Name only; both declare what the Law is; both address the Person offending, and both command him not to proceed; for both there is as much Reason to complain of a Prohibition at Law, as of the Declaration mentioned in the Resolution.

4. To the Fourth Resolution, if it respects the Prisoners committed by the Commons, they apprehend the Application ought to be made to their House.

5. For the Fifth Resolution, the Commons have the same Exceptions to it as they had in the Third Resolution; for if Councils, Attorneys, or Solicitors, are prohibited, and act contrary to the Order of any Court, they are guilty of a Contempt of that Court, and for such Contempt they may be taken into Custody.

To their Lordships last Resolution, it is very true, That in the last Reign the House of Commons did resolve in the Case of Sir Thomas Arundel as hath been cited; which Case was, That Sir Thomas Arundel was indicted for High-Treason, and afterwards had beyond Sea, where he was at the Time of the Execution against him; and afterwards, within a Year after the Execution awarded, he was brought Prisoner into England, and would have a Writ of Error, but it was denied him, upon which the House of Commons made his Resolution mentioned. At the Common Law, if a Person had been guilty of a capital, or any other Crime, and had been in England at the Time of the Indictment found against him, but was beyond Sea at the Time of the Execution awarded, and thereupon an Outlawry was had, the Indictment would not be returned, nor would any Outlawry be issued; that Error in Fact: The Practice whereupon was, That Persons guilty of Treason, would fly beyond Sea, and there they 'till the Writs issued against them were denied, and then return into England, reverse their Outlawry, and become safe. To remedy which Mischief, was the statute of Edw. VI. made, which takes away that Error in Treason, unless the Person

X

Outlawed

Outlaw rendered himself to the Chief-Justice within a Year after the Outlawry; within which Exception was the Case of Sir Thomas Armstrong, as the Commons apprehended, which was the Reason of the Resolution: And in other Cases the Practice since that Resolution has been otherwise; for in the Case of Salisbury, who was attainted of Felony for counterfeiting the Stamp, a *Writ of Error* was denied him, though he petitioned for the same. But this Resolution is aimed at a *Writ of Error* for denying a *Habeas Corpus*, or denying to bail, or discharge Persons committed by the House of Commons, this Resolution is very wide from the Purpose; for, whether a *Writ of Error* be a *Writ of Right*, or a *Writ of Grace*, in all Cases where a *Writ of Error* does lie, yet their Lordships Resolutions cannot be carried so far as to make a *Writ of Error* lie in a Case where there is no Judgment pronounced, as there never is in the Case of a *Habeas Corpus*, or in any thing relating thereto; for if a *Habeas Corpus* is denied, or if granted, and the Person thereupon denied to be bailed or discharged, or in no such Judgment, but that the same, or any other Court, may grant an *Habeas Corpus*, and discharge or bail the Person committed.

Your Managers added, The Commons hoped it would be so Difficult to convince the Lords, that these Resolutions were both unreasonable and unparliamentary, and they have not been much justified; and certainly it cannot be parliamentary or reasonable, for the Lords to condemn the Commons in the Case of their own Privileges, when the Lords are no Judges of them: And therefore, though the Commons have now entered into this Debate with their Lordships, it was never meant to subject their Proceedings to the Lords Examination, but only to satisfy the Lords, and all Mankind, that the Commons have not done any extravagant Thing. That a Noble Lord said, *They did not intend to interrupt the Commons in the Determination of their Elections*. The Commons are beholden to them for that; for otherwise, when they thought fit, they might as well meddle with that, as several other Things they have of late taken upon them.

The Commons hope their Lordships will consider what the Constitution is, and think it not reasonable, that any Part should exceed due Bounds. But there have been great Invasions made upon it by the Lords, and some Instances of that kind have been delivered at the last Conference; and that the Commons can never suffer the Lords to assume this new Power to themselves. Were we certain Power could never be abused, an arbitrary, and what is called a *Tyrannical*, Power would be the best in the World; for that not being tied to any Rule, would apply the Remedies proper in all Cases; but since this is not to be expected, the Commons were in the right to stop this *Writ of Error*: They find one Thing has brought on another, and therefore, for the future, shall oppose any further Progress of this Nature.

It was further urged by the Lords, in Reply, That if such a *Writ of Error* wants a Precedent, 'tis a new Sort of Imprisonment has occasioned this. That the Consequences urged by Gentlemen cannot arise. That if the Law be fit, nothing but the Legislature can alter it. That 'tis said, the Lords cannot judge of the Privileges of the House of Commons. They do not say they can; there may be no Occasion: But from Precedents it appears they have done it by *Writ of Error*, and at the Desire of the Commons.

That not only the Lords, but all Mankind, will judge of what is not their Privileges, if they claim that which neither Sense, nor Reason, nor Law will justify.

That if the Commons say, To bring an Action at Law against Persons not privileged is a Breach of Privilege, all Mankind will say it is not.

That this comes upon a Petition of five Men to the Lords, saying (with, They have been imprisoned by the Commons for bringing their Actions against the Constables of *Aldersbury*, and for suing out *Writs of Habeas Corpus*, and are at last delivered in a *Writ of Error*.

The Question lies in a narrow Compass.

Whether they have a Right to bring their Actions at Law? If so, it is injustice to imprison them for doing it.

A Hardship to deny them *Writs of Habeas Corpus*, and a greater to imprison their Counsel and Agents, for endeavouring to procure them their Liberty.

That their Right is settled by a Judgment of Law, which will ever remain, till altered by the Legislature.

That a Declaration of one House, or both Houses, cannot alter the Law.

That the Lords intend not to disturb the Commons in their Right of judging, only as their own Members.

That the material Difference is between judging of the Right of the Election, and the Right of the Election.

And there may be Cases, as here, where the Election is not in Question, and yet the Election receives great Damage in being denied their Voss.

That the Right of Freehold is a Man's Birth-right, and cannot be taken from him, but by Law.

That if any Person be injured by any Officer whatsoever, he may, by Law, seek for Reparation: Otherwise, there is a Right without a Remedy, which is no Right at all.

In Answer to this, your Managers said;

This Action lies of the full Impediment; and 'tis a good Argument no such Action lies, because none was ever brought before; and espe-

cially, because *Querebus* cannot be preferred to have been wanting in every new Election of Members to serve in Parliament, say, many more justifiable than as the late Case of *Aldersbury* and *Winton*, where the Plaintiff was a Person likely to become chargeable to the Parish, and therefore removed by the Order of two Justices: And this, in the way, brings in mind the granted Case of *Aldersbury* and *Winton*, from the Report of the Lords Committee, where 'tis given in Answer, No such Action before was brought, *That you had such a case English Spirit as a Plaintiff*, though, it is said, he was then a *Cleric*, and formerly had been an *Abbot*, and his blood, it seems, was well warmed with this true *English Spirit*, who was rather a Spirit of Faction.

And in a worthy Objection, That in this Case *two* Costs and Charges followed by *Aldersbury*, or somebody for him, could not be less than *twelve*, more than the Costs and Damages he recovered, so that 'twas *twelve to one*, and no Benefit, but a Loss to him. A Noble Lord was pleased to say further, That though he would not pretend to judge of the Commons Privileges, yet he might of what was not their Privilege. In Argument appears very strange, since the Commons say, The Master in Question is their Privilege; and if the Lords bring 'em out to interfere to disturb them of it, the same Method may settle the Commons of all the rest. The Commons are not at all concerned about new Privileges, but continue the Possession of those which their Predecessors ever enjoyed and exercised, and which they think neither this or any other future House of Commons can ever depart from.

The Lords afterwards needed from the Generality of their Record and had Resolutions.

They said, the second, so far as that every one who apprehends himself injured has a Right to seek Redress, was general; but what followed of an Action at Law was confined to the present Case.

So the sixth, though it was general, was to be understood in this particular Case.

As to what was said, That none but a *Superior* Court can take Cognizance of what was done at the Commons, it was answered,

That when the Earl of *Shropshire* was committed by the House of Lords for a Contempt, he was brought by a *Habeas Corpus* to the Court of *Kings Bench*: This was complained of to the House of Lords, but they pulled it over, being of Opinion, a Man might seek for Liberty where he would.

The Lords Judgment was then forced a Thing to be touched. Your Managers *in response returned*, They wished their Lordships, had said that at the beginning, it would have saved much Time, and shortened the Debate; for the Commons think their Privileges as sacred as the Lords can their Judgment. Your Managers proceeded to say,

That as nothing offered at this Conference, or the last, was meant to subvert or lessen the Privilege of the Commons, much less had any Thing as the Predecessors in the Time of Queen *Elizabeth* and James I. produced at the last Conference, any Tendency that way.

And in Answer to four Objections made to those Proceedings, your Managers said, The Commons did not take upon them so far as the whole Proceedings, which are very long; but though they had not their Books there to make out the Questions, can depend upon what they have said to be true.

In the Precedent of Sir *Francis Goodale's* Case, cited by the Commons, there are no Outlaws that, duly considered, can make that Case lie to the Advantage of the Commons on this Occasion: for if the Word *Order* be omitted, and taking the Answer to have been, That they did *not* *know* it did not stand with the Honor and Order of the House is (as dissent of any your Proceedings) or *Doing*, that will leave after the Case, since it is plain, from the Entry in the Journal, the Commons, in returning this Answer, had referred chiefly to the Precedent then quoted, by *Ellis*, where the Commons Regard to give the Lords any Reason (though the Lords desired them) for the rejecting at the last Reading a Bill the Lords had sent down to the Commons: The Reason for the Commons Proceedings in this Case were prepared by themselves, which they did communicate to the Lords; but the Lords were not so bold or dimitted: And though some Lords were present at the Commons delivering their Reason, there is a material distinction upon the Commons Journals of their Lords being present as *Lords of the Council*, and not as *Lords of the Parliament*.

And the Noble Lord who took Notice of the Commons Omission in the first of this Case, and pretended to base it fully and truly himself, understood, That the new *Writ* was ordered to issue at the Request of Sir *Francis Goodale*, by his Letter; which, for the Satisfaction of the House, was read and entered on the Journal, before any Question for the new Election was made.

To that of the 28th *Ellis*, the Commons did not at the last Conference omit to take Notice of the Judges Determination; but it is fully filed as a Matter the Commons in the Examination of that Case were informed of, but did not reject; the Commons then asserting themselves to have the sole Determination of that Case.

Your Managers further urged, Though the Commons do not subvert their Privileges, it may be proper to attend what they claim, with the Reason why they are at this time so much concerned to appeal to the Commons upon them.

They suppose, the Rights of *Voters* may be protected upon Freehold, Chancery, or *Prerogative*, and they do not pretend to draw them from the Courts of Common Law, when as fact they come there originally, immediately and directly in Question.

But it is as plain, when the Right of Voting in an Election is the Thing originally, immediately and directly in Question, that is fully cognizable in the House of Commons, whose Determination is the standing Rule for all Places; and if the Elections only were examinable by the Commons, and every Election's Vote was examinable elsewhere, the Consequence of such different Determinations is fully felt, as delivered at the last Conference, which common and known Difference of coming originally or collaterally and incidentally in Question, will settle the Case of the Earl of *Bedford*, where the Order of the House of Lords came only incidentally in Question upon an Indictment for Murder, not

is here any Injury in this Cafe that require an Action, much less Damages, the Elsher's View, upon every Election, depends upon its own true Foundation, as the Elsher then stands entitled by Freehold, Charter, or Prescription, whether he was entitled, or was allowed or refused, at any former Election, or not.

Not a Damage always necessary to a Remedy; that which is specific, and gives the Right, is the most noble and complete Remedy; Damages being only secondary, substituted by Way of Recompense where the other cannot be had, as appears by many Instances in the Law.

The Commons had great Reason to affect their ancient Right, and withhold their late and new Attempts upon the Constitution, which in every Step have been unprecedented, see the *Attles*, the *Habeas Corpus*, and the *Writ of Error*.

The Action was never known, though the like Occasions have been so frequent as Elections, unless these *Ashby* Men have more refused Notices of their Rights and Privileges than others ever had.

As to the *Habeas Corpus*, the Argument is to much stronger, as Liberty is dearer than Property.

As to the Writ of Error, though the Lords Resolution is general, they now assert it to be of Right only in this Cafe.

As the Commons at the last Conference saved the Point of a Writ of Error being of Right or of Grace, for they do now, not by Way of Admission, but as 'tis not material in this Cafe.

But thus much may be observed, That this is not the Common Cafe, where the Question arises and falls under the Determination of the Judges of the Law, which is of Penalties of Right, and Writs of Error in the Courts of *Wylshire* (as that of Sir Thomas *Ashby* was) where the Queen is Party; there it is in the room of a Suit against the Crown, and it denied, the Party has no Remedy.

This Petition to the Queen, for a Writ of Error in Parliament, is properly a parliamentary Cafe, and is the same when the Queen is Party, or not; and seems some Remains of our ancient Constitution, where all Petitions were to the King in Parliament, or to the King, and his Great Council, which was distinct from the House of Peers, and were examined by Them, Whether fit for the Parliament to proceed upon or not; and so by, That upon such Examination they could not be rejected, is to say, That Examination was insignificant.

And if in this Cafe no Writ of Error lies, it cannot then be said, That the denying of it is an Obstruction of Justice, or contrary to *Magna Charta*.

That a Writ of Error lies not in any Proceeding on any *Habeas Corpus*, has been the uniform Opinion at former Times, as appears in the Cafe of the City of *London*, 7 *Jas.* reported by the Lord Chief-Justice *Cole*, in his Eighth Report, where one under an Arrest, for the Fidelity in a *By-Law*, brought his *Habeas Corpus*; and the Judges took it for a Ground, That no Illice or a Demurrer could be joined upon the Return, nor could any Writ of Error lie upon their Award; and upon that, as a Principle, grounded their Resolution, *Q. 228*.

And that this never came directly in Question, is, because a Writ of Error in such Cafe was never asked, much less had, upon a bare Commitment of any Court whatsoever: And it is hard to imagine, that there is any lawful Recourse or Appeal for Liberty left untill at this Day, when so many, in all Times, have had Occasion to apply for it, especially considering the frequent Commitments of both Houses of Parliament.

That the Commons are not surprized to find the Lords make such a Shew of submitting their Privileges to the Courts of *Wylshire*, when it is in order to draw all the Rights and Privileges of both Houses to their own final Determination; and much less when they consider how insignificant all Courts of Justice are rendered, while their Lordships exercise the last Resort in Judicature.

The several Attempts in the Way of Judicature, which have been made upon the Constitution, are so many Reasons for the Commons at last to make a Stand.

The very Form of the *Writ of Error* in Parliament is altered in a most material Part.

It is still returnable into Parliament generally; and the Judgment is entered, per *Cur. Parliamenti*.

But where the ancient Form, which appears in *Reginald's Entries*, *Fe. 202*, was, *Et de Consequencia* *et Adjunctione* *Denominatio* *Spontanea* *et Temporalis* *as Communione* *et Parlamento* *negra* *exhibitione* *interius* *pro* *Reveris* *arrogantibus* *factis* *formis* *quod de jure*, &c.

Of late, as appears by a *Writ of Error*, printed in the Lord Chief-Justice *Gascoigne's* second Report, *Fe. 228*, (and agreeable to that are all the Modern ones) that Word (*Communione*) is omitted.

This is only taught for an Instance, That even the highest Records, which ought to derive to us our Laws and Constitution pure and entire, have been corrupted.

And so proceeded to influence some Modern Innovations upon our Constitution, in Point of Judicature.

In December, 18 *Jas. I.* it appears by the Lords Journal, That an Appeal to the Lords from a Court of Equity, was by them acknowledged to be as new and unprecedented as any of the Attempts which occasion the present Conference.

How the Lords interrupted your Managers, affirming, That they were restrained from entering into Debate of their Judicature of Appeals from Equity, as foreign from the Subject Matter of the last Conference. But it was answered, and replied by your Managers, That this was Part of the Matter offered at the last Conference.

And your Managers declared,

That they had more to offer, and were ready to proceed upon the Subject Matter of the last Conference in such Manner as they thought their Duty to the Commons of England required, if their Lordships thought fit to hear them: Whereupon the Lords did rise, and broke off the Conference.

Replied, That the Proceedings of this House, in relation to the *Ashby* Men, committed by this House for a Breach of Privilege, and the other Proceedings of this House in that Matter, are in assistance

of the ancient and undoubted Rights and Privileges of the Commons of England.

Ordered, That all the Proceedings, in relation to the *Ashby* Men, committed by this House, and the Report of the Lords Journal, and Reports of the Conference, and of the last Conference, be printed.

Ordered, That Mr. *Spadler* do appoint the printing of the said Proceedings and Reports.

The Proceeding at the Court of Queens Bench on the Habeas Corpus.

A Complaint was made to the Honourable House of Commons, That since their last Resolutions in the Cafe of *Ashby* and *White*, several Actions have been brought by *J. Pate*, *J. Ouse*, *J. Pate*, *H. E.*, and *D. Hare*, and prosecuted by *R. Alton*, against the Constables of *Ashby*, in Breach of the Privileges of that Honourable House; whereupon they were pleased to order the Matter of the last Complaint to be heard at the Bar of their House, and ordered the Persons concerned to attend there; and appointed a Day accordingly.

The Parties appeared, (all but *Alton*) when the Witnesses were examined, and they severally called to the Bar of the House, and then withdrew. And, upon full hearing, the House were pleased to order their Speaker to issue out Warrants for committing those (being taken into Custody) to his Majesty's Goal of Newgate.

In *Michaelmas* Vacation, 1704, they prayed a *Habeas Corpus* upon the Statute of 31 of *Chas. II.* upon the Return of which, all the Judges sat; and advised, whether they were bound by that Statute, when were unanimously of Opinion that they were not; and accordingly they were remanded. And in *Hilary* Term following, they moved the Court of *Star-chamber* for a *Habeas Corpus* by the Commons Law, which was granted, upon the Return whereof the Judges of the *Star-chamber* denied the Affirmance of the rest of the Judges, Whether they might be discharged? Who were all of Opinion, except the Lord Chief-Justice *Bolt*, That they ought to be remanded: But it was argued in the *Queen's Bench* by Council, and afterwards the Judges delivered their Opinion *for*, *Mr. Page*, *Mr. Mansel*, *Mr. Lobner*, and *Mr. Dowse*, were Counsel for the Prisoners, and upon the reading of the Return of the Commitment, *Mr. Page* said, That the Writ of *Habeas Corpus* is a Writ grounded on Common Law, and therefore this Court can had all Persons, that by the Laws of England are bailable; that he did not say, but that the House of Commons has Privileges that belong to them, and may commit for Breach of such Privileges, that he did not now only inquire, if there be any Law for the Commitment of the Prisoners; and therefore the last Question he made was, *If there was a Breach of Privilege returned?* Adding, That there being no Notice in the Return, that the House of Commons has any Privilege, he needed not argue, whether they have a Power or not, to imprison Men from suing in the Queen's Court. The Lord Chief-Justice *Bolt* told *Mr. Page*, That the Question was, *If they were not to take Notice of their Power, though not returned to that Court?* *Mr. Page* answered, That though the Court would take Notice of any Power of the House, yet that not appearing in the Return, they could not judge of it, the Commitment being by the Speaker, and not by the House. The Lord Chief-Justice replying, That the Commitment was in pursuance of the Order of the House, *Mr. Page* submitted, That then it should be shewn to be by the House, the Speaker being in the Chair, which was not mentioned in the Commitment. But this was over-ruled by the Lord Chief-Justice, who said, that by the House, was to be understood the whole House sitting, with the Speaker in the Chair.

Mr. Mansel continued the same Objection to the Commitment, adding, That it did not appear, that the Prisoners were any ways related to the House of Commons, either as Members or Officers. That as to the Lord *Star-chamber's* Cafe, he was a Member; that he agreed every Court must, and have Power to keep Order among themselves, but that to take a Man out of the House, who was not of the House, nor guilty of any Breach of Privilege, for ought appeared, by a Return, he knew no Law for it; that the Cafe assigned was, because the Prisoners had been in guilty of bringing and prosecuting an Action, which he did not take to be a Crime by any known Law; that in the Cafe of the Constables of *Ashby*, there was a Judgment at Law justly given, which could not be got over, until some Act of Parliament interposed, and the Law being so, that a Man might bring his Action, he did not know what Cause a Man could be guilty of that acted that Law; that the Words of this Commitment were foolish, That bringing this Action is a Crime by the Declaration, is a high Contempt of the Jurisdiction, and is Breach of the House's Privilege; that they know not what the Word *Declaration* means, unless it did intend and signify, that Breach of the House's Privilege; that as to the Words, against the known Privileges of the House, he was as a Lord what Action is against the Privilege of the House, because they can have no Privilege against Law, and he was sure it was not against Law to bring any Action. Then he took Notice, That the Commitment was during *Præfure*; adding, That he had known Persons committed per *Mandatum Domini Regis* *basili*, and therefore by stronger Reason ought they to be bailed, if committed by the House of Commons.

Mr. Lobner enforced what had been alledged by the other Two, adding, That one Part of the Commitment, which for the Reasons of it, was for bringing an Action at Law, contrary to the Declaration of the House of Commons, in Opposition to which Declaration, he must oppose the Declaration of the Lords; that the Commitment being also said to be for a Contempt of the House, the Declaration of the Commons, the Lords, in the Cafe of *Ashby* and *White*, had declared against it. Then he urged, That no other Court, save that of the Lords, and the Courts at *Windsor*, and other inferior Courts of England, can execute any Jurisdiction, touching any Actions at Law, and that Privileges which are against the known Laws of England, are in themselves void, Another Objection, or Exception, was, That the Continuance of the Imprisonment of the Prisoners was a new Commitment; That the *Habeas Corpus* in the Way the Queen takes to make Disquisition about the Liberty of her Subjects, That tho' both Houses of Parliament are proper Judges of their own Privileges, yet this Court has formerly judged of

their Privileges, to which Purpose he intimated in the Lord *Shaftesbury's* Case, whereas Notice is taken of a Case, where an Original was filed against a Member sitting in the House; and that in the Case of the Lord *Hayes*, the Lords Temporal and Spiritual had declared he was no Peer, yet, in this Case, when he was brought to be tried for Murder, and denied the Jurisdiction here, intussuing upon his Privilege, this Court refused to try him, and allowed his Plea. That the Lords of Parliament are the Commons of Parliament; That there is no Precedent in Parliament to appoint or commit a Man for profaneing his Inviolability of Franchise, but on the contrary, he believed, in the Rolls of Precedents there might be found a Case, where Bail had been allowed by this Court, upon a Commitment out of the House of Commons.

Mr. *Davis* excepted to the Return of the Commitment, alledging first, That the Warrant did not sufficiently describe the Crime; Secondly, That it did not appear, that the Party committed had Notice of the Vote or Declaration of the House of Commons, for every Man is not bound to take notice of a Vote, because it is but a temporary Thing; Thirdly, That it not appearing by his Return, that the Prisoner was a Commoner, he might, notwithstanding any thing that appeared to the contrary, be a Lord, and then it must be agreed, the Commons had no Jurisdiction: That it had been a general Commitment, without showing the Offence particularly, and said for a Breach of Privilege only, perhaps it had been a good Commitment, but here the Cause was set forth, and it appeared by the Judgment of the Lords, in the Case of *Ashby and White*, that was no Cause at all of Commitment; that bailing the Prisoners in this Court, did not meddle with the Privilege of the House of Commons, because, if bailed, yet they are answerable to the House, and are Prisoners in *Captivitate Legis*; that indeed Justices of the Peace can commit for a Riot without Bail, but this Power arises from an express Act of Parliament for that Purpose, that the Queen herself cannot commit so as to bind the Power of the Law, but this Court can in such Cases, and always have, upon good Cause shewed, bailing notwithstanding such Commitment: Concluding, upon the whole, for the Release of the Prisoners.

The Council having done pleading, the Judges proceeded to give their respective Opinions.

Mr. Justice Gaud and Justice *Pryor* said, They would chiefly insist upon *Lex & Consuetudo Parliamenti*, but they would still maintain the Form of the Warrant.

Obj. It was objected, That it is not set forth in the Return, how the House of Commons have a Power to commit.

Ans. We must take Notice of their Power without shewing it.

Obj. That this is a Commitment by the Speaker only, for that the Warrant does not run, *Ordered by the Knight, Citizens, and Burgesses in Parliament assembled*, according to the Precedent in my Lord *Shaftesbury's* Case, 1 *Mod.* 144.

Ans. That it is good, being according to their Form, and that it must be presumed, the Speaker's Warrant was by Order of the House.

Obj. There is no Seal to the Warrant, and that every Warrant ought to be under Hand and Seal, or else the Commitment is unlawful.

Ans. Courts don't use to commit by Warrant under Seal, but a Justice of Peace must; but they at the Quarter Sessions don't commit under Seal; besides, the Custom of Parliament justifies this Warrant.

Obj. This is not like my Lord *Shaftesbury's* Case, for he was a Member of the Lords House; also his Commitment was, for a Matter done out of the House.

Ans. Then they must never commit for Breaches of Privileges, for men are committed by others than their own Members, and for Matters out of the House.

Obj. The Duration of the Imprisonment during Pleasure, is illegal and uncertain.

Ans. This is made use of for their Advantage, for they are discharged upon the Parliament's rising; but also this Form is according to their Customs. And for Concepts to this Court we commit, without expelling for what Time, which is by Consequence during Pleasure.

Obj. This Commitment is for bringing that Action to Law, and for taking the due Course of Law.

Ans. What a Privilege, but differing with the Law? The generality of Breaches of Privileges, are for taking the due Course of Law. As to the Case of *Ashby and White*, that is objected, who knows whether this is the same Case? It does not appear to us to be the same, for there may be different Votes, and different Circumstances in this Case; if you go to the meaning the Words of a Commitment, Who knows that most Commitments that would hold for such, do express the Cause but shortly, and but just give a Hint: And the Law does presume, that the higher Courts do understand what they do, and therefore are not tied up to such Stridings as inferior Courts.

Obj. If this Court of *Queen's-Bench* can discharge a Man committed per *Mandatum Parvum Regis*, they may upon a Commitment by any Member or Body of People whatsoever, if not legally committed.

Ans. That Commitment is not good, because the King does not assent in Person, but hath committed all his Power Judicial, some in one Court, some in another, so that nobody is to be committed to Gaol upon the King's special Command. But what is done in Court, is of greater Authority, and the Law does adjudge it to be done by the King.

Obj. Shall the House of Commons take a discretionary Power to regulate how Actions shall be brought, and what Actions shall not be brought?

Ans. Can we suppose that High Court would lay the Progress of the Common Law of England? This highly dishonourable to have such Thoughts, and nobody does think so, nor will presume to say so; and People would laugh at one that should say, The House of Commons will take away the Liberties of the People.

There is no better Way to determine the Jurisdiction of either House of Parliament, than by Usage and Custom, so the Bounds of Parliaments are. That there is no Precedent or Case, nor so much as an Opinion extant, that the Courts of *Westminster-Hall* have a Power to judge of the Authority of the House of Commons, or that the Orders and Commitment of

the House of Commons can be discharged in *Westminster-Hall*, nor ever before attempted to be discharged here, upon such a Commitment by the House of Commons; which is a good Argument, according to my Lord *Cab's* Rule, that we want Power to do it.

'Twould be impossible for us to judge of the Privileges of the House of Commons, for there are no printed Books of their Privileges, nor are there any Means by which we can attain to the Knowledge of them, but their Customs and Privileges are kept as *Arms* in the *Library* of the House of Commons, and their Privileges depend altogether upon Precedents in Parliament; they do judge it is a Contempt of the House of Commons, And who shall say nay? They are proper *Leges* of the Matter, and upon the Return, it appearing they were committed by the House of Commons, our Jurisdiction ceases; and cited *Frydew's Annotations*, fol. 4. and the King alledging *St. John Ellis*, and others, in *Gr. Lib.* 181. (*Ant. Vol. VII. p. 232, 233*) That upon a Writ of Error in this Case, so the House of Lords, it was resolved, That this Court hath no Jurisdiction of a Misdemeanour committed in Parliament.

Mr. Justice *Parson*. That this is a Case of the highest Consequence, for it concerns the Privileges of the House of Commons, the Liberties of the Subject, and the Jurisdiction of this Court; for the first Custom of this Nature, for the Lord *Shaftesbury* was a Member of the House, and there may be a greater Jurisdiction in some Cases over their own Members, than over Strangers: However, they had not any Authority upon the Return, for they are committed by another Law than we proceed by; and to be committed by one Law, and to judge of the Commitment here by another Law, would be a strange Thing: For the House don't commit by the Authority of the Common Law, but by another Law, *Leges & Consuetudines Parliamenti*; for there are in England several other Laws, besides the Common Law, viz. the Ecclesiastical Law, the Admiralty Law, &c. and then the Law and Customs of Parliament, where they have particular Laws and Customs for their Durections.

To late Judicature will help to clear this Case. The House of Lords have a Power so judge by the Common Law, but not Originally, and so that Reason it is provided by the Constitution, for the Judges to give their Assistance, which they are bound to do. But they have another Law, viz. *Lex & Consuetudo Parliamenti*, which the Judges are not to assist in, or give any Opinion; and I dare say, the House of Lords would take it ill, should they assent or advise therein, for they have their Privileges in their own Rules and Books.

That the Commons have also a Judicature, not by the Common Law, but so judge of Breaches of Privileges, and Consuetudes to their House, *secundum Legem & Consuetudinem Parliamenti*, 4 *Inst.* 23. and by this Law these Persons are committed, and now are brought to be discharged by the Common Law. The Resolution of the Commons upon the Breach of Privileges is a Judgment, and the Commitment an Execution of it, which cannot be controlled; for this would be to draw it out of *aliquid* *Examinis*, and then the Commons would not be supreme Judges of their own Privileges.

That the Resolution in the House of Lords, in the Case of *Ashby and White*, does not bind the House of Commons, nor determine their Privileges, for they judge of the Privileges of the Commons as an Incident to the Action, and one Court may judge of a Matter within the Jurisdiction of another Court, when without it they cannot determine. The Case before them is by this Court may of Admiralty, or Ecclesiastical Jurisdiction, if the Question arises in an Action depending in this Court. But such a Determination will not bind another Court, which has an original Cognizance of that Matter, as an Ecclesiastical now depending in the Common Pleas, the general Issue pleaded, and a special Verdict; the Question there is, If a Quaker's Marriage be good? Now if it should be held in that Court a void Marriage, and the Judgment should be affirmed in this Court, and upon a Writ of Error in the House of Lords, it might be reversed, that would not bind the Ecclesiastical Court, but they might proceed there for Incontestancy; and if they should proceed there to Excommunication, finding it a void Marriage, and the Party taken by the *Excommunicationis Cognoscere* should bring the *Malice Copios* upon the Return of it, we could not discharge him. But this is a Matter originally sitting in Parliament.

That this Court may keep other inferior Courts within their Jurisdictions, but not the House of Commons; for no Prohibition was ever granted to that Court, though they exceeded Jurisdiction. So if the House of Lords do exceed, or take Cognizance of Matters in the first Instance, no Prohibition would lie; for no inferior Court can prohibit a superior: And no Prohibition was needed here, nor could we have granted it; for the House of Commons is superior to all ordinary Courts of Law. When the House of Lords took Cognizance, and proceeded upon the Petition of my Lord *Warham*, complaining of an Order of the Court of Exchequer, for filing the Record of a Survey of the Honour of *River*, and of Landship of *Bedfordshire*, which the House of Commons, upon the Petition of Sir *Batley*, complaining of this Proceeding, Jan. 28. 1704. Refused to be without Precedent, and unwarrantable, and too big to the subverting all the Rights and Properties of the Commons of England as an illegal and arbitrary Power. They also Resolved then, That it is the undoubted Right of all the Subjects of England to make use of the Record; as they ought by Law to have done, before the said Proceeding of the House of Lords. *Lord's* *Præf.*

In a *Just.* go. It doth not belong to the Judges to judge of any Law, Privileges, or Customs of Parliament; for the Lords, Customs, Liberties, and Privileges of the Parliament, are better to be secured out of the Rolls of Parliament, and other Records, and by Precedent and continual Experience, than can be expected by any one Man's Power.

In a *Just.* Every Court of Justice hath Laws and Customs for its Direction; some by the Common Law, some by the Civil and Canon Law, some by particular Laws and Customs, in the High Court of Parliament *pro propriis Legibus & Consuetudinibus* fol. 181. That Judges ought not to give any Opinion of a Matter of Parliament, because it is

The Law given Jurisdiction in the House of Lords, and the Law given to the Jurisdiction of the House of Commons.

That the Ecclesiastical Courts exceed their Jurisdiction, a Prohibition will lie; and even the King's writ, contrary to Law, are void.

He insisted that the Lord Bishop's Case was a great Authority for him.

He petitioned the House of Lords to sit, and also to have the King's Leave. The Lords determined he was not a Lord; yet when he was brought upon an Indictment by the Name of Charles Kemler, Esq. he here pleaded, and insisted, that he was a Peer; which Plea was allowed, and he was not tried.

That the Lord Chief Justice was so clear in his Judgment, yet the other three Judges being of a contrary Opinion, the Majority prevailed; and the first three were condemned to Amputation.

Mr. Leveson moved, That the Judgment might be entered upon Record.

Lord Chief Justice Hall asked the Clerk of the Crown, How they entered the Judgment in their Cases? Who answered, That they never make up any Roll, but only enter a Remembrance generally upon the Book of the Writ. Lord Chief Justice Hall told him, That of right he ought to make up a Roll, (and as he was informed he had the Fees allowed for making up the roll), and then bid the Counsel come to his Chambers, and bring Precedents; and afterwards the Judgment was entered in this Manner.

The Judgment: *Stylis Capiti's Cause* Capiti & alii v. Dantem pro d. et al. per amicos et Curiam Domini regis, sua Remission.

Upon the Commitment of these five *Abolition* Men, and their being remanded to Newgate again, the House of Lords drew up the following Representation and Address, viz.

The Humble Representation and Address of the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled, presented to her Majesty the fourteenth Day of March, 1704, and her Majesty's most Gracious Answer thereto: With their Lordships' Thanks for the same. Together with the Petition annexed to the said Address, and laid before her Majesty.

Do. Mem. 13. Martii, 1704.

WE your Majesty's most Dutiful and Loyal Subjects, the Lord-Spiritual and Temporal in Parliament assembled, are under an unavoidable Necessity of making our humble Application to your Majesty, upon an Occasion, which, as it is very grievous to us, so we fear it may be equally so to your Majesty: But the Proceedings of the House of Commons, in relation to five Burgesses of the Town of *Abolition*, *John Pate*, *John Ouse*, *John Pate*, *Henry Boff*, and *David Howe*, have been to us very extraordinary, and the Consequences of such Proceedings may prove so fatal to the Proprieties and Liberties of the People of England, and indirectly tend to the Interruption of the Course of Justice, to the eluding the Jurisdiction of Parliament, and to the Domination of your Royal Prerogative, that we cannot answer it to your Majesty, to the Kingdom, and to ourselves, without setting them before you in a due Light.

One *Matthew Abdy*, a Burgess of the Borough of *Abolition*, brought an Action upon the Case at Common Law, against the Constables of the Town of *Abolition* (being the proper Officers to return Members to serve in Parliament for that Place) for having, by contrivance, fraudulently and unlawfully hindered him to give his Vote at an Election.

In this Action a Verdict was found for him; but Judgment was given against him in your Majesty's Court. *Quod Absque*, which was reversed upon a Writ of Error brought in Parliament, where he obtained Judgment to recover his Damages for the Injury, and afterwards had Execution upon that Judgment.

The said *Matthew Abdy* being a Burgess of the same Borough, and having (as they conceived) had the like Wrong done them by the Constables there, and supposing the Law to be equally open to all *Abolition*, did lawfully commence and prosecute Actions against those Officers, in order to recover their Damages.

And for to doing, they were sent for to the Bar of the House of Commons, and committed Prisoners to Newgate, the fifth Day of December last, during the Pleasure of the House of Commons, as having acted contrary to the Declaration, in Contempt of the Jurisdiction, and a Breach of the Privileges of that House.

These Proceedings are wholly new and unprecedented. It is the Birthright of every Englishman, who apprehends himself to be injured, to seek for Redress in your Majesty's Courts of Justice. And if there be any Person who cannot seek that Right, and can procure what he shall, and when he shall not be allowed the Benefit of the Law, he ceases to be a Freeman, and his Liberty and Property are precarious.

The Crown lays Claim to too much Power, and we are sure the Law has trusted no such Authority with any Subjects whatsoever.

If a Man makes his Oath, in swearing himself to be a good Subject of State, when he has not, if he makes for Court, by applying to an incompetent Jurisdiction, he will fall of Relief, and be made liable to Costs, but to no other Punishment: He is not guilty of a Crime, nor is it a Contempt of the Court that he proper Jurisdiction.

But such Men were guilty of no Misdemeanor, the Power of Law was seized by the Judgment of that Court, which is allowed to be the last Resort; and they will continue to be the Law, till it be altered by the Law-Enforcing Authority. They fear their Neighbour quietly and lawfully reap the Fruit of the Judgment he had obtained, and yet, for pursuing the true Remedy, they are condemned to an indefinite Imprisonment, during the Pleasure of the House of Commons.

This Method does introduce an Uncertainty and Confusion never before known in England. The most arbitrary Governments cannot thus make such Influence of Partiality and Oppression.

The Power of Law is infinitely small; and yet the House of Commons take upon them to punish Men by Imprisonment, for such a daring to have the Benefit of what is established by Law.

We humbly observe to your Majesty, That the fifth Thing they alleged in the Warrant of Commitment, as the Offence of these five Persons, is, That those Actions were brought contrary to a Declaration of the House of Commons.

It was never yet heard, (when there was a House of Lords in being, and a King or Queen upon the Throne) that the House of Commons should challenge a Power, by any Declaration of theirs, to alter the Law, or to restrain the People of England from taking the Benefit of it; nor have their Declarations, any such Authority, as to oblige Men to submit to them at the peril of their Liberty.

If they have such a Power in such Cases, they may apply it to all Cases they please; for when the Law is no longer the Measure, Will and Pleasure will be the only Rule.

The Certainty of our Laws is that which makes the chief Felicity of Englishmen. But if the House of Commons can alter the Laws by their Declarations, or (which is the same thing) can deprive Men of their Liberty, if they do not as they take the Benefit of them, we shall have no longer Reason to boast of our Part of our Constitution.

The next thing alleged in the Warrant is, That the commencing and prosecuting these Actions was a Contempt of the Jurisdiction of the House of Commons.

Such a Jurisdiction was never claimed by the House of Commons, (in any this Occasion) and it is this Novelties is a Jurisdiction founded on their own Authority of Declaration, they will stand and tall together.

The House of Commons have for a long time exercised a Jurisdiction over their own Members, by allowing or disallowing their Elections, as they saw Cause. But they have never before entertained a Notion, That they had a Jurisdiction over their Electors, to determine (finally and exclusively of all other Court) the particular Rights of those to whom they owe their Being.

Your Majesty's Royal Writ commands, That the several Electors make choice of Persons to represent them in Parliament, in order to do and consent to such things as should be ordained there, relative to the Peace and Defence of the Kingdom, and the Honour, which the Parliament is called: And they thus sit in Council, in proceeding to elect Members for the Parliament thus summoned, but under the Writ which requires them to elect, nor the Indemnity by which the Return is made, impose any thing whereby it may be affected, that the Electors put into the Power of their Representatives their several Rights of Election, to be finally disposed of at their Pleasure.

It was as inserted voted in them by Law before the Election, and which the Law will preserve to them, to be exercised again as in the like Manner, when your Majesty shall be pleased to call another Parliament.

It was not possible for the Election to succeed, that such a Pretence would ever be set up by their Representatives, when in the Courts of Justice the House of Commons had never taken upon them to try or determine the Right of any particular Election, unless incidentally, and only in order to decide a Question, of the Title of some Member of their own House to sit amongst them.

The Right of Election is a legal Interest incident to the Freehold, or founded upon Custom, or the Letters Patentes of your Majesty's Royal Ancestors, or upon particular Acts of Parliament, and must be tried and determined like other legal Interests. And this Consideration does manifestly show the Absurdity of pretending, That such Rights can be decided by the House of Commons, when it is rather a Power of administering Justice, in order to do what the Truth, not a Power of giving Damages, which is the only Reparation the Elector is capable of receiving, as such a Case. Therefore, if the Electors, when they are deprived of their Rights, have no Place to resort to, but the House of Commons, the Right of Election would be a Right without a Remedy, which indeed is no Right at all.

And it is put into the Power of the Officers, who have the Return of Members to take in Parliament, to reject the Votes of as many Electors as they please, without being liable to make any Reparation in Damages to the Parties, which is a Notion not very likely to preserve the Freedom and Impartiality of Elections.

The third thing alleged is, that these Men in the Warrant of Commitment is, That by bringing these Actions they have broken the Privileges of the House of Commons.

A Breach of the Privileges of Parliament is certainly a great Offence; and, of all others, the House of Lords ought to be the last that should go about to lessen or excise it, as having a little Interest with the Commons as the Preservers of the Privileges of Parliament.

But however it might from the Interest of the Lords to be silent, while the House of Commons are setting a-foot new Pretences of Privilege, because they may share in the Advantage, yet we think it our Duty and our Interest to do all we can to preserve the Constitution entire, and not to sit quiet when we see Innovation attempted, which tend to the Diminution of the Rights of the Crown, or of the Privileges of the subject: Because the best and surest way to preserve the original Privileges of Parliament, is to abide by those that are ancient and known, and it is not in the Power of either, or both Houses, to create new Privileges to themselves.

It never was thought a Breach of the Privileges of Parliament, nor prosecuted as Actions against any Men who were so concerned in Privileges of Parliament, and therefore, since the late Constables of *Abolition* had no Title to Privilege of Parliament, at the Time when these Actions were commenced or prosecuted, we cannot imagine upon what Foundation the pursuing these Actions are by such a Breach of Privilege by the House of Commons.

It seems very necessary it should be known upon what Rule this Pretence is grounded, That the People of England may be at a Certainty,

* Do. Mem. 13. Martii. It is ordered by the Lords Spiritual and Temporal, in Parliament assembled, That the Petition presented and Addressed this Day presented to her Majesty, with the Majesty's most Gracious Answer thereto, and the Petition of *Abolition*, and laid before her Majesty, shall be forthwith printed and, as before, ...

and for some Limits set to the Claims of Privilege. To seek the truth, it has been said, There are privileged Cases, as well as privileged Persons, but no Instance has been produced, whereby this Distinction can be applied to justify such Commitments.

Actions at Common Law have been brought upon false Returns and double Returns of Members to serve in Parliament, as in the Cases of *Earl of Bernersham* and Mr. *Oxley*, which proceeded to Judgment, and a Writ of Error was brought in one of them, and the Plaintiffs could not prevail in either of their Suits, and yet it was never pretended, that the committing or prosecuting those Actions was a Breach of Privilege of Parliament, nor were the Persons concerned in them assigned it or criminalised, tho' there was a much greater Calumny for such Pretence in those Cases, because the Question there directly concerned the Right of sitting in Parliament; and consequently that would have been almost proved against Cases, if any such Distinction had been once thought of in those Days: Whereas in the Actions brought by these five Members, neither the Plaintiffs nor Defendants were Members of Parliament, nor did the Actions relate in any manner to the Right of sitting there.

The Question of the House of Commons at that time was very different from what it is now.

When the Judgment of the King's Bench (where Mr. *Matthew Holt* sat then Chief Justice) which passed in favour of Sir *Samuel Bernersham*, the House of Commons was immediately, was received in the Exchequer-Chamber, the House of Commons was so far from thinking it for their Advantage, to have their Members deprived of the Benefit of the Common Law, that in the Year 1704 a Committee was appointed to enquire touching the reviving that Judgment, and by what Procurement and Solicitation, and by what Ways and Means the same was revived, and the Names of the particular Judges that were concerned: And when afterwards that Judgment in the Exchequer-Chamber was affirmed in Parliament, the House of Commons never thought themselves secure against the Corruptions of the Officers who were to take the Poll, and make Return at Elections, all they hadgot an Act in the seventh and eighth Years of the late King, which gave a Remedy in *Writs of Habeas Corpus* for false and double Returns: The Issue contained were then in their own hands with the Jurisdiction of the House of Commons, and the Remedy to be laid there, which now they feverely contend their Elders should instantly acquiesce in: And we cannot but think it manifest Partiality in those Gentlemen, to go about by such violent Means to deprive their Elders of recovering of Damages, when they are wronged in being deprived of giving Votes, since they thought it necessary for themselves to have that Advantage when they are injured in their own Elections.

The Sufferings of these unfortunate Men have not ended here, and the Rights of the free-born Subjects of England have received a further and no less dangerous Wound in their Person.

These five Men having endured a long and chargeable Imprisonment, and departing of their Liberty any other way, were advised to sue out Writs of *Habeas Corpus* remarkable in their Majesty's Court of Queen's Bench, hoping to obtain their Discharge by the Help of that Court, where the Judgment ought to be given according to the Laws of the Land, without regard to any Votes or Declarations, or Commands to the contrary: But this Endeavour proved unsuccessful, and they were remanded to Newgate by three of the Judges of that Court, contrary to the Opinion of the Lord Chief Justice Holt.

We shall not presume to offer any Opinion to your Majesty, upon Occasion of this Judgment, at present, because it is not regularly brought before the House: And we only mention it, because the House of Commons took such offence at the bringing these Writs of *Habeas Corpus* upon the twenty-fourth of February last, they voted, That whoever had uttered, pronounced, pronounced, or assisted in the Prosecution of such Writs, were Disturbers of the Peace of the Kingdom, and had endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons in Parliament.

This is a heavy Charge; and if it be to criminal a thing for a Professor to pray a *Habeas Corpus*, it does not only affect those who are at present concerned, but ought to touch every Commoner of England in the most insensible manner.

Liberty of Person is of all Rights the most valuable; and of which, above all other things, the Law of England is most tender, and has guarded with the greatest Care, having provided Writs of several kinds, for the Relief of Men restrained of their Liberty upon any Pretence, or by any Power whatsoever; that in every Case they may have some Place to retire to, where an Account may be taken of the Reason and Manner of the Imprisonment, and the Subject may find a proper Relief according to his Case.

No Crime whatsoever does put an Englishman into miserable a Condition, that he may not endeavour, in the Methods of Law, to obtain his Liberty; that he may sue, by his Friends and Agents, for out a *Habeas Corpus*, and have the Assistance of Solicitors and Counsel to plead his Cause before the Court where it is to be brought.

The Court is bound by the Law to assign him Counsel, if there be Occasion, and to give Judgment upon his Case, as it stands upon the Return of the *Habeas Corpus*, and to reward, discharge, or bail the Prisoners, as the Cause of his Commitment appears there: Inoffensive in Parliament in Law; and if what is alleged as the Cause of Imprisonment appears to be no Crime in Law, it is not the Authority of those who made the Commitment that can oblige that Court for remanding the Prisoner.

This is the Law of England. But according to these Resolutions of the House of Commons, a Man has the Undisputed [tho' through Ignorance or Mistake] to do an Act which shall be voted a Breach of Privilege, he becomes in a worse Condition than any Felon or Traitor; his Commitment makes it impossible for him in Person to solicit and procure a *Habeas Corpus*, and if any have Charms enough to assist him, or to plead for him, in order to draw to the Court the Inefficiency of the Commitment in Manner of Law, they become liable to lose their own Liberty, and are involved in the same Guilt of Breach of Privilege: So that let the

Imprisonment be upon the most trifling Occasion imaginable, if it be by Order of the House of Commons, every Commoner is still subject to it without Redress; no Friends can help them, no other Power can deliver them, till your Majesty shall put an End to that.

The Lords have as yet a Concern, the House of Commons can have, to maintain the Authority, and keep up the Awe of Parliamentary Commitments: And they will always do so, as far as Justice and the Usage of Parliaments will allow.

There have been Cases, particularly that of the *Earl of Shaftesbury*, where Persons committed by the House of Lords, even Members of that House, have sued out Writs of *Habeas Corpus*, and got a Writ of Error of their Court, tho' there have been brought before the Court of King's Bench, and their Counsel have been heard on their behalf: And yet no Confine ever put upon them for their Endeavour to obtain that Liberty, or upon their Agents, Solicitors, or Counsel.

The House of Commons, formerly assisted with more Effect, were to sue an *Order* in, as the Liberty of the Subject, but in the Year 1704, when a Writ of *Habeas Corpus* was served upon the persons who were attending the House of Commons, in the behalf of Mr. *Shaftesbury*, who was committed by Order of that House, and the House was made sensible of that, that such a Writ was served upon their Officers, and that it was not to be despised, but to put any Confine upon the Persons concerned in procuring the Writ, or in appearing, in behalf of the Prisoner, but left the Benefit of a Writ of Liberty to obey the Command of the *Habeas Corpus*, which he had accordingly, by carrying his Prisoner before the Judge, when the *Habeas Corpus* was returnable.

The House of Commons have in former Ages shown a great and steady Concern for the Freedom of the Persons of their Fellow-Subjects: And upon their Persons many excellent Laws have been made to protect Liberty against all unlawful Restraints by any Authority, even that of the Crown: But now it is nullified, That such open Imprisonments are out of the Reach of those Laws, and their Legality not so to be examined.

In the third Year of the Reign of your Royal Grandfather, the House of Commons sent a noble Petition to the English Parliament and in order, by undoubted Evidence, that the Causes of the Imprisonment shall be explicated in all Cases, that it might appear, in the Mouth of the *Habeas Corpus*, whether they were sufficient in point of Law. *Idem* Pl. VII. P. 126, 127.

It could not then have been imagined, That the Sentences of the Men would ever have proceeded to an order to detain and detain a Power of depriving their Fellow-Subjects of their Liberty, or that it be criminal to much as to enquire into the Validity of those Sentences.

There is another Occasion of Offence, which in House of Commons have taken against *John Pryn* and *John Oxley*, two of that Prisoners, who thinking themselves wronged in their being remanded to Newgate, by the Opinion of the major Number of the Judges of the Court at *Queen's Bench*, humbly petitioned your Majesty for a Writ of Error, in order to bring the Judgment before your Majesty in Parliament. And if it is in the Subject a matter concluded by any Judgment, till he comes to the full Report made by the Law in this Case.

The House of Commons being informed of their Petition, came to a Resolution, which they laid before your Majesty, That the Commitments of that House were not examinable in any other Court whatsoever, That no Writ of Error lay in this Case; and that as they had expended their Duty to your Majesty as great Dispatch to the supplies, for they had an entire Confidence in your Majesty, That you would not give leave for the bringing any Writ of Error.

The full Petition on the Vote is very great, and the Consequences of it are plain; if the Commitments of the House of Commons are examinable in no other Place, then no Man in *England* can be committed; however, it secures of his Liberty longer than the *Habeas Corpus* can; and Men may be allowed as well to wish that it were not so, the Law may have a very high Opinion of the Justice of that House.

It has been held as an undeniable Maxim, That whoever executes an illegal Command to the Prejudice of his Fellow-Subjects, must be answerable for it to the Party grieved.

Let it be supposed then, That an Adieu of false Imprisonment was brought against the Sergeant of the House of Commons, and that the Sergeant justifies his taking the Plaintiff into Custody, by virtue of a Warrant of that House, and it appears upon the Face of the Warrant, That the Cause of the Commitment was no Crime in Law, and the Plaintiff demands, what must the Judge do for a Case? Will it be possible for them to avoid examining into the Commitment, and to give Judgment one way or another? Or can it be pretended, That a Writ of Error may not be brought upon such a Judgment? And yet the Court, before which the Writ of Error is brought, under a Necessity to do it three times, as the Law requires?

As to the second thing they have taken upon them to assert, That no Writ of Error lies in this Case, we admit of your Majesty with great Assurance, That by our Constitution the House of Commons have no Right or Pretence to determine whether that be a Crime or not. The Way of judging when a Writ of Error is properly brought, is by Law and not by the Court, to which the Writ of Error is directed; and then the Court shall not at present take any thing to your Majesty as an extraordinary matter, and before the proper Time, as to that Point, Whether a Writ of Error brought upon a Judgment for remanding Prisoners upon a *Habeas Corpus* can be maintained.

Which way that Question will be decided hereafter, who the Writs of Error are returned into the Parliament, is not at all material, in respect to the Petitions of the Prisoners which now lie before your Majesty. For unless your Majesty be pleased to grant the Writs of Error according to their Prayer, the Matter cannot come to the proper Decision in Parliament, and Justice will be manifestly obfuscated.

Whether the Writs of Error ought to be granted, and what ought to be done upon the Writs of Error afterwards, are very different Things.

to bring Liberty and Property into the National and infallible Gales of the Lords Judicature, and with direct Reproaches, as to the Manner in which that Judicature has been exercised, and in the most contemptuous Way told us they wished to mention the Influence, because they hoped we would reform.

We desire no other Judge but your Majesty, how such a Treatment of us becomes their Gentleness; and we dare appeal to all your Subjects, for Witness of the unprosecutable Manner of administering Justice in the House of Lords.

We hope the great Disaffection the House of Commons has conceived against us may prove of some real Service, and of useful Caution to your Majesty, for it has drawn them directly to arm (what was too visible before), that they were among us from Power, and a larger Share of the Administration than it could with them be the Nature of our Government. They directly complained, That by the Constitution the Judicature, in the last Resort, was not placed in the same Hands with the Legislature; though they cannot think it to be in any Country where the Government is not arbitrary, and the Prince's Will the Law. They have been long endeavouring to break in upon the Lords Share in the Legislature, of which we could mention too many Instances to your Majesty. From an antient Claim, These Aids to the Crown are to begin in the House of Commons, and that the Lords could not alter the Sum, they have of late Years pretended (but without any Reason, and against the known Usage of Parliaments), that we could make no Alterations in any Parts of a Money-Bill, though it have no Relation to the Money. And upon that Foot, when they have had a Mind to get any thing passed into a Law, of the Irregularities of which they have been desirous to convince the Lords, they have talked it to a Money-Bill, in order to put the Crown and the Lords under that unhappy Necessity, either to agree to a Law they might think prejudicial to the Publick, or to take the Money, which perhaps, at that Time, was absolutely necessary to the saving the Kingdom.

By this Method they assume to themselves the whole Legislative Authority, taking, in effect, the Negative Voice from the Crown, and depriving the Lords of the Right of deliberating upon what is for the Good of the Kingdom: For this Reason the Lords had, on a very solemn Manner, refused never to suffer such Impudence for the future, lest the Importance of the Bill be never so great. This Resolution was well known, and yet in this present Session (as appears by the printed Votes of the Twenty-eighth of November last) a great Number of the Gentlemen of the House of Commons, to the manifest Danger of disappointing the Supplies of the Year, which must have been the Ruin of the whole Confederacy, and delivering up of Europe into the Hands of France, made an Attempt to tack to the Land-Tax a Bill which had been rejected in two preceding Sessions of Parliament.

Thus the House of Commons have formerly for on Foot several Attempts against that Share in the Legislature which is placed in the Lords: But this is the first Time they have published their Desire to be let into the Judicature of Parliament.

Whatever they would assume upon this Occasion, we desire not to meddle with the Choice of the Commons Representatives; we willingly leave that Matter where it is: And in what Manner it is conducted them, how impartially, and how finally, is so well known by Experience to most Parts of the Kingdom, and so universally understood, that the People will be extremely desirous their Estates and Properties should be subject to such Determinations.

It is not strange the free Conference ended without Success, when the Commons came to it with such a Temper as appears by the Votes of the Eighth of March, made after they themselves had confined to the free Conference: If these Votes had been published soon enough, it would have fully convinced the Lords how vain a Thing it was to confer with them further upon the Matters in Debate at the former Conferences: For not content with what they had done before, upon Information that their Serjeant had been forced with two Writs of Habeas Corpus, submitted before the Lord-Keeper, in Behalf of Mr. Montague and Mr. Davies, two of the Gentlemen who had been of Counsel with the five Prisoners, they came on a Resolution, that no Commencer, committed by them for Breach of Privilege, or Contempt of the House, ought to be, by Habeas Corpus, made to appear before any other Judge, and request their Serjeant to make no Return, or yield any Obedience to these Writs; and that for such Refusal he had the Protection of the House of Commons.

It has been always held the undoubted Privilege of the Crown to have an Account of the Reason why any Subject is deprived of Liberty, and it has ever been allowed, That by the known Common Law it is the Right of every Subject under Release, upon Demand, to have the Writ of Habeas Corpus, and thereupon to be brought before some proper Court, where it may be examined, whether he be detained for a lawful Cause: And the Statutes made in the Reign of your Royal Grandfather, and your Royal Uncle, have enabled, That in all Cases Writs of Habeas Corpus be granted and obeyed by the respective Officers upon great Penalties.

But these Votes import a direct Repudiation of these Laws, and so all Persons committed by the House of Commons.

It is no longer worth disputing, Whether a Person committed by them, though for a Fact which appears to be both lawful and necessary, may be delivered by any Court; for by this new Law he shall never be brought thither, and the Serjeant is not only warranted, but commanded openly to condemn your Majesty's Royal Writs of Habeas Corpus, brought upon the Act of the One-and-thirtieth of King Charles the Second, which is an Assertion of your Privileges, never before upon great Penalties.

Your Majesty does not claim an Authority to proceed any of your Officers for disobeying a known Law. The Habeas Corpus Act, in Times of imminent and visible Danger, was in the late Reign suspended by Acts of Parliament for some short Time, and yet (so placed was that Law held) that those Acts passed with great Reluctancy, and one of the Arguments that prevailed most for agreeing to that Temporary Suspension was, That it would be an unanswerable Evidence to all future Times, that this Act could never be suspended afterwards by any left Authority than that of the whole Legislature: But we live to see a House of Commons take upon them to suspend this Law by a Vote.

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They Ordered, That the Lord-Keeper of your Great Seal should be acquainted with their Resolutions, to the End the Writs of Habeas Corpus may be superseded, as contrary to Law and the Privileges of their House. They are contrary to no Law, but that of their Votes, which fairly are none of the Lords the Lord-Keeper was sworn to observe. But yet he is to act as his Feil. They have ordered this Law to be published to him by their Clerk.

The Lord-Keeper is a Contemner, and if he disobey, 'tis a Breach of Privilege; and if they should carry it so far, as to order him into Calais, he may keep, but is not to have, Relief from any other Court.

We humbly beg Pardon of your Majesty for this long and melancholy Representation, which we could not avoid, without being guilty of Treachery to your Majesty, and to our native Country. The five Persons immediately concerned are but poor Men; but we well know your Majesty's Justice and Compassion extends itself to the meanest of your Subjects.

The Matters in Dispute are of the highest Consequence: Your Majesty's Privilege, the Reverence due to Laws, and the Liberties and Properties of all the People of England are concerned and at Stake, if their Encroachments prevail.

We do not pretend to facilitate your Majesty to put it Stop to their Innovations, your own Wisdom will suggest the most proper Methods: We have endeavoured to do our Duty, in laying the whole Matter before you.

We humbly beg Leave so far to relate what has been said, as to prefer your Majesty's stout View of the unhappy Confusion of facts of your Subjects as have Right of giving Votes for choosing Members to serve in Parliaments, which has been hitherto thought a great and valuable Privilege; but by the late Proceedings of the House of Commons is likely to be made only a dangerous Snare to them, in case they who may be hitherto chosen to serve in Parliament shall think fit to pursue the Methods of this present House of Commons.

If they refuse from making Use of their Right in giving their Votes, they are wanting in their Duty to their Country, by not doing their Parts towards the choosing such Representatives as will use their Trust for the Good of the Kingdom, and not for the Oppression of their Fellow-Subjects.

If the Officer who has the Right of taking the Suffrages refuse to admit them to give their Votes, they must either sit down by it, and submit to be wrongfully and maliciously deprived of their Rights; or if they bring their Affairs at Law, in order to assert their Rights, and recover Damages for the Injury (as all other injured Men may do in like Cases), they become liable to indefinite Imprisonment, by incurring the Disfigurement of those who are elected.

If, being thus imprisoned, they seek their Liberty by Habeas Corpus, (the known Remedy of all other Subjects) they do not only put their own Chans at Risk, but bring all their Friends and Agents, their Solicitors and Counsel into the same Misfortune with themselves.

If they think themselves to have received Injury by the Judgment upon the Habeas Corpus, and seek Relief by Writ of Error, (the known Relief of those who suffer by any wrong Judgment) all that ask them is that Matter are liable to lose their Liberties for it, and they themselves will be removed to new Prisons, in order to avoid the Justice of the Law.

We humbly conclude with acquainting your Majesty, That we have been informed, by the Persons of two of the Prisoners, that they have been long delayed (though they have made their Applications in due manner for Writs of Error): We are under a new-fangled Obligation, for the Use of Justice, and asserting the Judicature of Parliament, to make this humble Address to your Majesty, That no Importance of the House of Commons, nor any other Consideration whatever, may prevail with your Majesty to suffer a Step to be put to the known Course of Justice, but that you will be pleased to give effectual Orders for the immediate issuing of the Writs of Error.

Die Martii 14 Martii, 1704.

Her Majesty's most Gracious ANSWER to the ADDRESS.

MY LORDS,

I should have granted the Writ of Error desired in this Address, had I found an adequate Supply of putting on immediate End to this Affair, I am sensible there could have been no further Proceeding up to that Matter.

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the humble Thanks of this House be presented to Her Majesty, for Her most Gracious Answer, in which She has expressed great Regard to the Justice of this House, so much Compassion to the Prisoners, and such Tenderness to the Rights of the Subject.

The same Day the Queen came to the House, and put an End to the Session, and the Lord-Keeper prorogued the Parliament to Twelfth the First of May, which put an End to this Affair.

The Substance of what was offered by the Lords, at the Fifth and Second Conferences with the Commons, being already printed in the Proceedings of the Commons, and Page 148, 142, 143, 144, 145, 146, in 130 Resolves it is not here again inserted.

Some of the Arguments that were made use of by the Lords in their Debates, and at the free Conference, to maintain their own Regulations, and answer the Objections of the Commons.

The House of Commons made an Objection to the Manner in which the Lords proceeded at the first Conference: They said, They had anticipated all Debates, by determining upon the Regulations, whereas this is the proper and ordinary Method of Proceedings between the two Houses: When one House has formed an Opinion, they communicate it to the other, to the End that if it be found reasonable, it may be approved; or, if upon Examination it be thought the Carriage of the Dispute may be therein better to convince the other House of their Mistake.

The Second Objection made to the Manner of the Lords Proceedings was, That the Regulations were grounded upon the Petitions of Criminals.

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minds, who had fallen under the just Displeasure of the Commons, and upon a printed Paper sent regularly before the House of Lords.

As to the first Part of the Objection, the Lords did (as just Judges always do) consider the Matter of the Petition, and not the Persons of the Petitioners. And as to the second Part, the Lords said, The printed Paper mentioned by the Commons, was the Vote of the House of Commons, of the 24th of February, signed by the Speakers. If the Commons had disowned that Paper, there had been some Weight in this Objection, but if they think it regular to print and publish their Votes to the People, the Lords will always think it regular to take Notice, and make Use of those Papers as they see Occasion; and it seemed strange for the Commons to object to the taking Notice of their Votes, when the only Colour they have hitherto pretended for their first Displeasure at the five Petitions, was, That they did not take Notice of some Votes of theirs, (which they call their Declaration) made during their last Session. And the printing their Votes is the only Method they have yet taken, for the Promulgation of the new Laws they take upon them to make.

The Lords had no Occasion to say any thing in Defence of their first Resolution, because the Commons did not think fit to avow in Words, That they had a Power to create new Privileges by their Votes, though they have manifestly attempted it in Practice, and particularly in the Case of the five Petitions.

As to the unjust Resolutions which the Commons made upon the House of Lords, as if they had entertained original Causes, and were guilty of some encroachment in hearing Appeals from Courts of Equity;

The Lords avowed their Claim of a Jurisdiction, in hearing and determining Appeals from Courts of Equity, and could shew a continued Exercise of it, since ancient times; the Determination of Elections in the House of Commons, which yet the Lords do not go about to call in Question; But they deny their having meddled with any original Causes, or that the Case particularly mentioned by the Commons was at all of that Nature.

The Lords did not understand what the Commons meant, by saying, The Lords had founded their second Resolution upon an extraordinary Vote. The Judgment in the Case of *Abbey and Hyde* was given with great Deliberation, and founded upon undeniable Reason and unquestionable Authorities: And the Lords considered far in that Matter, as to direct the State of that Case, and the Grounds of that Judgment, to be drawn up and printed.

2. The second Resolution of the Lords consists of two Assertions: That every Man who apprehends himself to be injured, has a Right to seek Redress by Action at Law.

Secondly, That the prosecuting Actions at the Common Law, against any Person, not entitled to Privilege of Parliament, is no Breach of Privileges.

What the Commons objected to the Universality of the first Part of their Resolution, as if it would destroy all Definitions of Courts, and make a Confusion of Jurisdictions, did arise only upon a plain Mistake. The Lords mentioned Actions in general, without confining what they said to Actions at Common Law, or affirming that Actions for all Sorts of Injuries may be brought in any one Court.

As to the Intimation, that the Lords had no other Aim than to extend their own Jurisdiction, by the seeming Regard and Tenderness they shew'd for the Rights and Liberties of the People, the Answer is, The only just Way of interpreting Men's Meaning, is, by observing what they say.

The Lords were silent with respect to Liberty and Property on this Occasion, as well as in all others: They have voluntarily condescended themselves to be restrained, at the same time they desire the Commons not to go about to create new Privileges: The Lords claimed nothing new; and the Commons cannot with Reason desire them to give up what the Law and the Constitution have placed in them, the Jurisdiction in the last Resort.

The principal Thing insisted upon by the House of Commons against this Resolution, was, That there are privileged Cases, as well as privileged Persons; but they do not think fit to give any Instances of such privileged Cases as were anyways applicable to the Matters in Dispute, that is, That were fit entirely of the Consideration of the House of Commons, that the bringing an Action at Common Law in those Cases was a Contempt to the House of Commons; and unless that could be done, this Division of privileged Cases from privileged Persons will have its Weight to justify the Commitment of the five *Abbey* Men; If Men refuse to bring Actions in *Wigmore-Hall*, for Matters cognizable in Parliament, so that they can have no Relief in the Courts below, it does not follow from thence, that they ought to be committed for Breach of Privilege on that Account.

The determining of Elections is admitted to be the Business of the House of Commons, and yet it is certain, that the prosecuting Actions at Common Law, for false or defamatory Libels, was never thought to be a Contempt to the House of Commons, nor was any Body punished or committed upon that Account, in the Cases of *Sir Samuel Bernardes* and *Mr. Ogden*.

The Freedom of Speech in Parliament, is the most necessary and the most acknowledged Privilege of the House of Commons: And yet when an Intimation was brought in the *King's Bench* against *Sir John Elliot*, and others, for Words spoken in the House of Commons, and Judgment was given against them in that Court, the Commons did not think it sufficient to condemn that Judgment by Votes of their own House, but brought their Votes up to the Lord, and desired their Concurrence, which was given; and immediately thereupon a Writ of Error was brought in Parliament, and the Judgment rigorously reversed there: And it cannot be denied, that upon this Occasion the most valuable Privilege of the House of Commons was brought under the Judgment of the Lords, as well as their Judicial as in their Legislative Capacity.

The Case of *Richard Steele*, and the Act of Parliament which passed upon that Account, in the fourth Year of King Henry the Eighth, was

that which was principally insisted on by the House of Commons, in the Case of *Sir John Elliot*, for judging their words of Feigning of Feigning of Speech, and Denying the Injustice of what was done in that Case by the Court of *King's Bench*.

The Case of *Stowe* might be said by the Lords as another Instance, to shew, That this Division of privileged Cases will not save the Purpose of the House of Commons, to justify the Commitments of the *Abbey* Men. He was prosecuted in the Starry Court for Words spoken, and Bills offered in the House of Commons, in order to be pulled into Law, and upon that Account was imprisoned and condemned to pay a considerable Sum, and petitioned the House of Commons to be relieved in that Matter. The House of Commons did not then proceed to put a Stop to those Bills, or to commit the Persons concerned in them, but thought the only Remedy against those Prosecutions, and others of like kind, was to prepare a Bill, in order to be pulled into a Law, for making void the Judgments against *Stowe*; and took that Occasion for the same Bill, to declare the Law in general, and to give an Action to a Person who should be afterwards vexed or molested for the like Cause, in which they should incur treble Damages and Costs of Suit.

There is no Case that can more properly be called a privileged Case, with respect to the House of Peers, than the determining of Petitions; and yet if that Matter comes to be incidentally a Point, in any Case depending in the Courts in *Wigmore-Hall*, they must proceed to determine of it, as they think the Law to be; and the Law must not give cause to hinder it, nor found Fault with them upon that Account.

The Courts in *Wigmore-Hall* must necessarily judge of the Privileges of Parliament in many Cases: When any Person prays a Writ of Privilege, (which was always the Way anciently when Men desired the Benefit of Privilege, and is not of an established right upon Occasion) the Court where the Writ is prayed must judge, whether the Party has Right to Privilege or not.

Suppose the Sergeant of the House of Commons should kill, or be killed, in the Execution of a Warrant of that House; upon an Indictment for Murder, the Court must necessarily judge of the Legality of the Warrant.

The Commons supposed Cases of Affronts to the Person of the Speaker, or of reproachful Words spoken of the whole House of Commons, are Instances of what they called privileged Cases.

There is no Doubt, but either of these Cases would be Contempts, and such as might be punished by the House; but most certainly, there were also false Officers as might be prosecuted in *Wigmore-Hall*: And if the Attorney General should bring Information upon them, it could never be pretended, that he would be guilty of a Breach of Privilege of the House of Commons.

It was urged, That in privileged Cases, the Votes of the House of Commons were the Probations in the Ecclesiastical Courts, and that when Prohibitions were layed upon the Judges in the Admiralty, or Ecclesiastical Courts, it was a Contempt for them to proceed further.

The Answer to this is, that Prohibitions to the Ecclesiastical and Admiralty Courts, were founded upon a particular Reason: The Proceedings in those Courts are according to the Civil or Canon Law, and therefore it was necessary to preserve the Constitution, and restrain those Courts from making Invasions upon the Common Law, that a Guard should be laid upon them, and a Power be left to restrain them; and this Power is lodged in the Courts of *Wigmore-Hall*, who are armed with the sliding Writs of Prohibition, in such Ecclesiastical and Admiralty Courts. Time to Time, upon Complaints made to them: And the Writs of Prohibition must be served personally upon the Judge of the Admiralty, or the Ecclesiastical Judges, who will be liable to Attachments if they proceed after such Service, until five hours as they have shewn the Nature of the Suit to the Courts from which the Prohibition issued; and if the Suit be properly of Ecclesiastical, or Admiralty Concurrence, the Court must grant a Constitution, whereby they are at Liberty to proceed as usual. This is a known and settled Method of legal Proceedings, but the Votes of the House of Commons were never yet referred to the Queen's Writ: No Court is bound to take Notice of them; on the contrary, the Judges are bound not to take Notice of them, but to act according to the known Law; nobody has Power to prohibit the Courts in *Wigmore-Hall*; the Judges there are sworn to proceed to the Judgment, notwithstanding any Command under the Great Seal, or Privy Seal, or by any other Authority whatsoever: And the Subjects of England have no longer an Intimacy in the Courts of Law, if the Judges are to take Notice of the Votes of either House of Parliament, and regulate their Judgments accordingly.

The Votes would not always be uniform in either House, and it appears by the preface Dispute, that the two Houses might often differ in Matters of Importance, and the Judges would be under Difficulty which of the House to obey: And if they yielded Obedience to both, they would be obliged to all very contradictory.

What was said against the Third Resolution of the Lords, was, First, That thereby the Lords took upon them to judge of the Commons Privileges: To this it was said, That if the House of Commons were the Name of Privilege, would proceed to no thing inconsistent with the known Prerogatives of the Crown, with the known Privileges of the Lords, contrary to the Laws, or defolutive to the Liberties of the People, the Lords were bound to tell them, There were not their Privileges. If by saying, they only are Judges of their own Privileges, they would deprive the Crown and the Lords from taking Notice of manifest Innovations, and oblige to them as there was Occasion, the Commons might take to themselves the whole Government without Control.

They were challenged to produce Precedents to warrant the Commitment of Men, only for proceeding in Suits at Law against those who had done them Wrong, and had no Pretence of Privilege.

The Lords did not dispute the Power of the Commons, in examining and determining the Elections of their own Members, nor of enquiring

into all Matters relating to the Determination of that Question, and applied their reasoning to the Qualifications of Electors, and agreed that what they determined would be binding, as to the Right of the Member or no in the House: But that Determination would not bind the Right of any Elector, for he was no Party to that Dispute of the Election, he was not bound for himself, nor was his Cause in Agitation before the House: and the Affliction brought by the Elector has no manner of Relation to the fixing of the Member, but is only for Recovery of Damages upon Account of the particular Injury done him by the Officer at the Election.

Suppose there was a Contest about two Persons, which was Mayor of a Town; the Court, where that Cause was tried, in order to a Determination of the Right, must perhaps examine into the Rights of those who chose that, but would it be pretended, that the Electors would be bound by the Opinion of the Court in that Cause, and that they could not bring their Actions to recover Damages against the Officers who wilfully refused their Votes, however the Question was decided as to the Mayor? So that it was begging the Question to pretend, that because the House of Commons can try the Right of the Member to sit, therefore they only have a Power to decide finally the Rights of the several Electors.

There is no Weight in the Objection, That if their Sums were allowed, the Officers who are obliged to take the Poll would be exposed to Multiplicity of Actions.

The Law is so in all Cases of Elections of Officers: He who is to take the Poll is bound to do his Duty in his Office; 'tis as such with an honest Juror, though he should be guilty of a Misdemeanor, he is in no Danger, for no Jury ought to find him guilty. But if an Officer wilfully and maliciously refuses to admit those who have Right to give their Votes, every one of them may sue him in any proper Court, as they are cause, and the more he wrongs, the more he ought to suffer. And which would be the greater Mischief, that the Officer who does Injustice should be subject to Actions, or that he should be at Liberty to reject as many rightful Votes as he thought fit, without being liable to make any Reparation, and which is the true Sense of Commons ought to take? The Lords observed, That the Nature of Orders of Things seemed to be quite inverted in this Dispute; the House of Commons were taking part against the Freedom of Law, against the Liberty of Men's Persons, and against the Right of their Electors.

As to the several Precedents insisted upon, they conclude nothing to the present Question, every one of them relating to the Right of the House of Commons chosen of determining the Elections or Returns of their Members, which they are in the quiet Possession of, and the general Expressions which are found in the Relation of these Precedents, can be understood only with respect to the Subject-Matter of these Cases.

The first Precedent, in the 24th of Queen Elizabeth's, is of a double Return for the County of Norfolk. Though the Lords do not deny, That such Cases are proper to be determined by the House of Commons; yet this Precedent does not go far towards asserting their Right, for in that Case the second writ was quashed by the Chancellor and Judges, before the Determination made by the House of Commons: And in the same Precedent they have not rightly stated the Words of the Queen's Message, or of the Resolutions of the House of Commons, as will appear by Sir Simon D'Ewes's Journal, and they could not say they had any original Journal of that Time.

As to the second Precedent they cited, which is the Case of Sir Francis Goodwin, in the first Year of King James the First, which they made use of to prove their own power of determining Elections, and that they were not to give an Account of their Proceedings therein to the Lords: It appears by their own Journal, That they had not issued that Case Loddy, in fact the Lords, as the Desire of the Commons themselves, were Mediators between them and the King in this Dispute; and that the Commons at last yielded the Point; and notwithstanding their Determination in favour of him, suborned, That a new writ should issue for choosing a Member in the place of Sir Francis Goodwin. And though there be Mention in the Journal of a Letter wrote by Sir Francis Goodwin, desiring, That this Third writ should issue; yet that could make no Difference in the Case; for it will not be pretended, That a Member could give up the Right of his Election, and the Judgment of the House.

But all this makes nothing to the Justification of the Continuance of the Aylsbury Men.

The Precedent cited in 1672, relates only to the Right of issuing Writs for the Election of Members during the Continuance of the Parliament, the ordering of which was voted to be in the House of Commons only, and is not at all disputed at this time.

The Lords never disputed the Commons Power of committing for Breach of Privilege, as well Persons who are out of the House of Commons, as those who are: The Question is only, Whether a Member that has no Relation to the Sitting of any Member in Parliament, may be made a Breach of Privilege, by being called for in a Vote, or having that Name given to it in a Warrant of Commitment? That is, in other Words, Whether they have Power to create to themselves new Privileges by their Votes? For they will never be able to prove an Usage of committing Men for refusing to Law in such Cases, and it will be hard for them to convince those whom they represent, that this arbitrary oppressing poor Men, is or can be understood to be only an intemperate to preserve the Rights and Liberties of the People of England.

4. The Commons did not deny the Lords fourth Resolution, otherwise than by saying, That the Application was to be made to the proper Place, and that where the Commitment is by the House of Commons, there is to be Place to apply to for Liberty but that House.

The Lords thought this to be a Pious very fatal to Liberty; for it places an arbitrary and absolute Power of Commitment in the House of Commons. Tyranny may be in every as well as in a single Person. The worst Tyrant of Aylsbury carry that Name with as heavy an Imputation as any single Person.

The Lords never said, That every Prisoner who brings his Habeas Corpus

ought to be discharged, or that there are not Cases escaped out of the Habeas Corpus Act; what they said upon it, That a Prisoner brought before a proper Court by Habeas Corpus, whose it does appear that the Matter he stands convicted for is no Crime in Law, ought to be discharged, by whatsoever Authority he was committed, or by whatsoever Name the Fact is called in that Commitment.

Several Precedents were mentioned by the Commons. First, The Case of one Jones; but it did not appear who he was, nor what his Case was, nor who would have taken him from the Commons; and therefore there can be no Pretence to draw any Inference from such a Precedent.

The Lords wondered to find any Weight laid on the Votes polled in the Year 1675. It is well known the Kingdom was at that time generally grown weary of that Parliament, which had been continued thirteen Years; and there was a great Number in both Houses who watched for any Advantage to make their longer Continuance impracticable.

And there happening a Question at that time, Whether there might be a Proceeding in Appeals before the House of Lords, in Cases where Members of the House of Commons were Parties? This was so managed, that in about a Month's time Matters were grown to such a Height between the Two Houses, that all Correspondence was in a manner broken off between them; and they proceeded to make such Votes, and to do such Acts from Day to Day on either Side, as they thought would most provoke.

The Commons cited some of these Votes which were passed in their House towards the Height of the Contest, and the Lords might as well have cited other Votes of the House of Lords, in Contradiction to them, which were altogether as high, and are at least of as much Authority as those of the House of Commons: So that it is hard to imagine, what Use there can be of citing such Precedents, which did occasion two Progresses, one after the other, and both always have had Consequences wherever they are followed.

The House of Commons took the same Exception to the Lords fifth Resolution, as they did to the third: That they therein made themselves Judges of the Privileges of the House of Commons: And the Lords contented themselves with giving them the same Answer.

What the House of Commons said in respect to such capturing and guarding the Council, who played at the Queens Bench Bar, upon the Return of the Habeas Corpus in behalf of the Prisoners, seemed very remarkable, That it was because they were not so much as to acquiesce in the Opinion of the Lord-Keeper and the Judges, that the Prisoners were not liable by the Habeas Corpus Act; and they would not sit not taken Notice of them, because they would not sit fact-fact, but would bring on the Cause again, where the Privileges of the House of Commons were with great Licentiousness of Speech denied and insulted in public Court, without any Hopes or Prospect of Relief of the Parliament, but in order to vent new Dollars against the Commons.

This seemed to be a kind of Excuse for the Council of the Council; but it does in no part agree with the Votes relating to this Matter, which passed in general Terms, and may be cited for Precedents hereafter, for committing Council (with as good Reason as the Votes in 1675), when their secret Murmurs, which induced the House of Commons in that Case, will not appear.

The Vote of the 24th of February, ordered the Committee to examine what Persons had been concerned in pleading upon the Writ of Habeas Corpus, not what was said by Council in their Pleadings; and the Votes against the several Gentlemen of the 30th of February, are, That by pleading upon the Return of the Habeas Corpus on behalf of the Prisoners, they were guilty of breaking the Privileges of the House of Commons: It does not appear that there was any Complaint of what they said, at least there was no Vote against them for their Words, and indeed, if that Charge against them had been for Words supposed to be spoken, would have been an unaccountable Harshness so to have hurried them into Civilly, without ever bringing them to the House to hear their Accusation, or to be heard as to what they had to say for themselves.

It does not appear that these Gentlemen were ever heard, or indeed were at all concerned, as to the Writs of Habeas Corpus, brought before the Lord-Keeper and the Judges in the Vacation-time: But suppose they had, and suppose they were indicted, that as the Habeas Corpus Act was drawn, that Men might not be so clearly liable by the Judges in Vacation-time, by virtue of their Writs, which were formed upon that Statute, and yet they might be of Opinion, That the Prisoners had a reasonable Prospect of obtaining Relief upon Writs or Habeas Corpus brought at Common Law.

If they thought so, it was not upon slight Grounds, as appeared by the Consequence; for the Lord Chief-Justice of the Court of Queens-Bench, whose Learning and Judgment is well known, and as universally esteemed as his Integrity, was clearly of Opinion, That they were entitled to the Relief they prayed for their Clients.

The Commons may give what hard Words they please to these Gentlemen appearing to plead in behalf of the Prisoners upon the Writs of Habeas Corpus, they may call it Lasciviousness to the Commons, and a conspiracy to make a Difference between the Two Houses, and to disturb the Peace of the Kingdom: But after all this they can be said, the Fact will only be, That four Gentlemen, Lawyers by Profession, retained in a Case of Liberty upon a Habeas Corpus brought by two poor Prisoners, did their Duty in their Profession; and for doing so, were themselves imprisoned by the House of Commons, and denied the Benefits of the Habeas Corpus Act: And thus the House of Commons called, Doing Right to their Ends.

No Lawyer has suffered for serving his Client even against the Crown: If the learned in this Profession may freely open the Laws when the Prosecution of the Crown are in question, it will seem very hard they should be punished for doing it in a Case of Privilege. To deprive Men under Sentence of the Assistance of their Friends, exceeds the Severity of any Court but that of the Inquisitors, the very Name of which ought to strike all Englishmen and Protestants with Horror.

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The full Resolution of the Lords was not contradicted by the House of Commons; and therefore the Lords took it for granted, that as it was no longer controverted, but that a Writ of Error is a Writ of Right, and not of Grace; consequently, that the Commons did no longer insist upon that Part of their Address, That the Queen would not give Leave for a Writ of Error.

As to what was said by the Commons, That it was not material whether Writs of Error were of Grace or not, because they did not lie in the Case of the Petitioners: The Lords said, That whether the Writs of Error could be maintained or not in point of Law, was not of the Cognizance of the House of Commons, nor the Matter in Dispute between the Two Houses.

LII. The Proceedings in the House of Peers and House of Commons, on the Case of CHARLES BATHURST, Esq. (mentioned in the foregoing Proceedings) in January, 1703.

Jan 20 die Januarii, 1703.

A PETITION of Charles Bathurst, Esq. was presented to the House of Commons, and read, touching an Order made by the House of Peers, the Twelfth of February, 1702, with relation to an Order made by the Court of Exchequer, the Fifteenth of July, *Dixies Verbi Regis Regis Guineas* Terms, concerning an Inquisition and Survey of the Boundaries of the Honour of Richmond, and Lordship of Middleham, and of many other Honours, Manors, and Lordships, bounding thereupon; and praying the Consideration of the House thereof, and such Relief on the Subject-Matter of the said Petition, as shall be thought fit.

Ordered, That *several* Members be appointed to search the Journals of the House of Peers, as to their Proceedings touching the Matter aforesaid, and also the Officers of the Court of Exchequer, touching the Proceedings there, in relation to the said Inquisition, and report the same to the House.

And several Members were appointed accordingly.

THE CASE of CHARLES BATHURST, Esq. Petitioner. To the Honourable the Knights, Citizens, and Burgesses, in Parliament assembled, in order to his Relief against certain Proceedings in the House of Peers, at the Instance of the Right Hon. THOMAS LORD WHARTON, Appellant, from an Order of the Court of Exchequer, bearing Date the 15th Day of July, 1702, against ROBERT SQUIRE, Esq. Respondent.

July 19, 1701.

THE Court of Exchequer made an Order *ex officio* for the Preservation of a Record of that Court.

Nov. 9, 1702. The Lord Wharton, finding that the said Record was made use of in Evidence against him in a Trial at the *Duchess-Bench Bar*, of an Issue directed out of Chancery, wherein the said Lord Wharton was Plaintiff, and the said Petitioner Mr. Bathurst, the said Mr. Squire, and others, were Defendants, concerning some Lead-Mines, did, on the 19th of December, 1702, petition the House of Lords (by way of Appeal) from the said Order of the Court of Exchequer, and prayed to have that Order discharged, and the Record taken off the File.

In which Petition the Lord Wharton complained, That the said Record was imposed on the Court (by contrivance between the said Mr. Squire and Mr. Bathurst, a sworn Clerk in the Court of Exchequer), and therefore prayed, they the said Mr. Squire and Mr. Bathurst might answer the said Petition (which he called an Appeal); and accordingly they were ordered to answer the same.

Jan. 5, 1703. Mr. Squire and Mr. Bathurst petitioned the House of Lords, *strongly* for, That no Suit was ever depending in the Court of Exchequer between the Lord Wharton, and the said Mr. Squire and Mr. Bathurst; and that therefore the Lord Wharton's said Petition was not an Appeal, but an original Complaint against them for a Crime of a high Nature, for which they ought to be left to be tried by the usual Course of the Laws of the Land; and prayed their Lordships to dismiss the Lord Wharton's Petition, and to discharge their Order, by which they the said Mr. Squire and Mr. Bathurst were obliged to answer the same.

Jan. 21, 1703. The Lord Wharton put in his Answer to their Petition, insisting on his Appeal as regular, and alleging that there was a Suit in Chancery, wherein the said Mr. Squire was a Defendant (among others) concerning the Lead-Mines in Question, and that the Order made in this Case (also in the Court of Exchequer) affected the Suit in Chancery; and he then obtained an Order to hear one Counsel on each Side the very next Day.

Jan. 22, 1703. Counsel were heard, and their Lordships were pleased (on Debate) to dismiss the Petition of the said Mr. Squire and Mr. Bathurst, and to order them to answer the Lord Wharton's Petition (or Appeal) on Monday next following. Against which Proceedings several of the Lords entered their Dissent (or Protest), and gave Reasons for their so doing in the Words following, viz.

First, "We conceive that by this we assume a Jurisdiction in an original Cause for their Reasons:

1st, "Because there has been no Suit between the Parties in the *Exchequer*, and consequently this Petition cannot be called an Appeal from that Court.

2nd, "Altho' there was a Suit in the Court of Chancery, yet one of the Parties required to answer was not a Party in that Suit; and therefore as to him (at least) it must be an original Cause.

3rd, "Tho' all had been Parties in the Chancery, yet it never was heard that an Appeal lay from our Court that had no Suit depending in it, because there was a Suit depending in another Court.

Secondly, "Because no Court can take any Cognizance of a Cause in

"which that Court cannot make an Order; but in this Case the House of Lords cannot make an Order (because very many are concerned in this Record who are not before this House) therefore this House cannot take any Cognizance of it."

Jan. 25, 1703. The Lord Wharton acquainted the House, That he was willing to leave out *Thomas*, and did only expect *Squire* should answer his Petition; and thereupon he obtained an Order to that Purpose.

Feb. 2, 1703. Mr. Squire put in his Answer, still insisting, as he had done in his said Petition, That it was an original Complaint against him, and could not be called an Appeal, these being no Suit depending in the Court of Exchequer between the Lord Wharton and him, and that the Record (which the Lord Wharton would have suppressed) not only greatly concerned Her Majesty, but the Inheritance of several Thousands of Persons, who are equally concerned (if not more than he) in the Preservation thereof, and that it was more immediately incumbent on the Barons of the Court of Exchequer to justify their own Order, and therefore prayed their Lordships would not proceed further against him, 'till all Parties concerned might be duly heard.

Feb. 8, 1703. The City of London, who are Grantees from the Crown of the whole Honour of Richmond, and Lordship of Middleham, finding themselves interested in the Preservation of the said Record, petitioned the Lords to be heard by their Counsel against the Petition of the said Lord Wharton, and their Lordships accordingly ordered Counsel to be heard on the City, on the Twelfth of February, being the same Day, that the Counsel for the said Mr. Squire were to be heard.

Feb. 12, 1703. Their Lordships heard Counsel for the Lord Wharton and Mr. Squire, (but refused to hear Counsel for the City, notwithstanding their said Order) and thereupon were pleased to order a Trial at Bar in the Court of Common Pleas, the next *Easter-Term*, by a Jury of Middlesex, wherein this was to be the assigned Issue, viz.

"Whether the Skins of Parchment, directed by Order of the Court of Exchequer, of the Fifteenth of July, 1701, to be filed, are, as the petition, unaltered, exact, and entire Commission and Return first filed in the Court of Exchequer, in the Sixteenth Year of King James the First."

And Ordered, That in the said Action the said Robert Squire should be Plaintiff, and take the Proof of the said Issue upon himself, and the said Lord Wharton, Defendant, and that the Skins of Parchment, or any Copy thereof, should not be given in Evidence in any Court whatsoever until the said Trial was over; and that the said Skins of Parchment (being upon the File by Virtue of the said Order of the Fifteenth of July) should not be allowed as any Evidence on the said Trial for the Plaintiff; and that after the said Trial, the Verdict given therein should be certified and returned by the Court of Common Pleas into the House of Peers.

Mr. Squire did not decline the Trial of the Issue above directed, as being confident of any ill Practice by himself, or any others, or by that he was not able to produce sufficient Evidence to prove that the said Record is perfect, unaltered, exact and entire, as first filed in the Court of Exchequer, in the Sixteenth Year of King James the First, (tho' Mr. Squire said he was not that it was a great Hardship to make him Plaintiff in the said Action, to put the Validity of the whole Record upon his said Proof, and to oblige him to take the Proof thereof upon himself, and all that without his Counsel, or the Counsel of others, who were more immediately concerned in the Preservation of the said Record, than being better Proofs, in order to find the said Issue truly in the Affirmative, to be given for the said Record, than for any one of the most Authentic Records in any of the Courts of Westminster (as is very believed). For,

I. In a Decree of the Court of Exchequer enrolled, made in the Nineteenth Year of King James the First, the said Record is recited and referred to, as then on Record in the Court of Exchequer.

II. The said Record is entered and enrolled *Exchequer*, in the Book of Inrollments of Surveys, &c. kept at a publick Office at *Windsor*, belonging to the Auditor for Yorkshire, and the said Entry is now as old as the said Record.

III. The said Record, and particularly the Boundaries of the Honour of Richmond, and Lordship of Middleham, (about which only the Disputes are between the Lord Wharton, and the said Mr. Squire, and the other Defendants) are fully entered, and remain on Record, in an old Book, kept amongst the Records of the City of London, and the same Entry there appears to be made in the Year 1625.

IV. Divers ancient Office Copies (and other Copies) of the said Record, and particularly of the Boundaries of the said Honour of Richmond, and Lordship of Middleham, have been taken, and the same were examined with the said Record, when on its proper File in the Court of Exchequer.

* Note.—The Record is a Survey and Boundary of the Honours of Richmond, and Lordship of Middleham, which together are larger than the County of Middlesex, and more than One Hundred Miles in Circumference; whereas the Boundaries contained by the Lord Wharton and Mr. Squire, are not above Two or Three Miles thereof.

que, and testified to be true Copies. All which said Entries and Copies do exactly agree with the said Record, now on its proper File. And moreover, there are many other Influences, Evidences, and Proofs of the Truth, Validity, and Entireness of the said Record.

But Mr. Spence being apprehensive that the House of Peers, in making the said Order of the Twelfth of February, 1702, had assumed a Jurisdiction in an Original Cause, could not (as he believed) comply with that Order, without doing Injury to the Rights and Privileges of the Commons of England; and, for that Reason, did not think fit to try the Issue as directed.

Nov. 9, 1702. *Narr.* That at the first Trial at the *Queen's-Bench Bar* of the Issue directed out of Chancery, (where the said Record was given in Evidence) the Verdict, upon full Evidence, was given and found for the said Mr. Bantley, Mr. Spence, and the other Defendants; yet the Court of Chancery (as it usual where a Right of Inheritance is to be found) afterwards directed a second Trial to the same End as the former, which came on at the *Queen's-Bench Bar* in *Michæmas Term* last, Nov. 23, 1703.

That at the last-mentioned Trial, the Counsel for the Plaintiff, the Lord *Wharton*, insisted that the said Mr. Bantley, and the other Defendants, could not give in Evidence the said Indenture and Survey, (tho' on Record in the Court of Exchequer) nor any Copy thereof, by reason the said Mr. Spence had not tried the Issue directed by the House of Peers, the said Twelfth of February, 1702.

That by reason of the Premises the said Mr. Bantley, and the other Defendants, were deprived of that so necessary a Part of their Evidence, for the Support of their Title to the Matters in question at the said last-mentioned Trial, and so (and for that Reason alone) lost their Cause, which otherwise they could not have done; for that the said Record (back'd with the concurring Testimonies of so many ancient and credible Witnesses, produced on the said Defendant's Behalf) must necessarily have convinced the Jury (as some of them have since own'd and declared), that the Boundaries of the Manors of *Abbingdon* in *Shropshire*, and of *Abbingdon* in the said *Shropshire*, as the said Record mentions them to be, and consequently, the Issue and Verdict must have been found for the said Mr. Bantley, and the other Defendants.

Septem. 22 die Januarii, 1703.

Mr. Ward reported, That the Members appointed to search the Journals of the House of Peers, and Offices of the Court of Exchequer, as to their Proceedings touching the Matters mentioned in the Petition of *Charles Bantley*, Esq. presented to the House on Tuesday last, had searched the Journals and Offices accordingly, and as they sit in Place what they found therein, and afterwards deliver'd the same in at the Table, where the same were read.

Ordered, That the Consideration of the said Report be refer'd to the Committee of the whole House, to when the Consideration of the Report made Yesterday, relating to the Case of *Abby and White*, is refer'd.

Ordered, That the same Members do search the Offices of the Court of Chancery, for the Bills and Answers, and Order on Hearing, made in the said Court, between the Lord *Wharton*, and the said Mr. Bantley and others, and report the same to this House.

Martin 25 die Januarii, 1703.

Mr. Bridges reported, That the Members appointed to search the Offices of the Court of Chancery for the Bills and Answers, and Order on Hearing, made in the said Court, between the Lord *Wharton* and Mr. Bantley, had search'd the same accordingly, and had Copies of the Bills and Answers, and Order on Hearing, which he presented to the House, and the Titles thereof were read: And also touching their Lord-

ships Proceedings in the Matter mention'd in the Petition of Mr. Bantley, in which Cause it was alleg'd, that Lordships had taken upon them an original Jurisdiction, in contravention an Order made by the Court of Exchequer, for the King of a Record that had been several Years in Mr. Grange's Chamber in the Temple.

Ordered, That the Consideration of the said Copies be refer'd to the Committee of the whole House, to whom the Report, with relation to the Petition of the said Mr. Bantley, is refer'd.

Janis 27 die Januarii, 1703.

The Order of the Day being read, for the House to resolve itself into a Committee of the whole House, to consider further of the Report of the Journal of the House of Lords, and also of the Petition of *Charles Bantley*, Esq. refer'd to the Committee:

Ordered,

That the Sergeant do go with his Mace in *Westminster-Hall*, and Courts there, and Court of Requests, and Places adjacent, and summon the Members there to attend the Service of the House.

And he went accordingly, and being arrived,

The House (according to Order) resolv'd itself into the said Committee of the whole House, and after some Time spent therein, Mr. Spence refused the Chair, and Mr. Frances reported from the said Committee, That they had come to some Resolutions, which they had directed him to report, when the House will please to receive the same.

Ordered,

That the Report be made To-morrow Morning.

Febru. 28 die Januarii, 1703.

Mr. Frances (according to Order) reported from the Committee of the whole House, to whom it was refer'd to consider of the Report of the Journal of the House of Lords, and the Petition of *Charles Bantley*, Esq. the Resolutions which they had directed him to report to the House, which he read in his Place, and afterwards deliver'd in at the Table, where the same were read, and (with some Amendments to the first of them) agreed unto by the House, and are as follow:

Resolved,

That the House of Lords taking Cognizance of, and proceeding upon the Petition of *Thomas Lord Wharton*, complaining of an Order of the Court of Exchequer, bearing Date the fifteenth Day of July, One thousand seven hundred and one, for filing the Record of a Survey of the Manors of *Abbingdon*, and Lordship of *Middleton*, in the County of *York*, is without Precedent, and unreasonable, and tending to the subverting the Rights and Properties of all the Commons of England to an illegal and arbitrary Power.

Resolved,

That it is the undoubted Right of all the Subjects of England, to make such Use of the said Record as they might by Law have done before the said Proceedings of the House of Lords.

After this, the House of Lords took into Consideration the Proceedings of the House of Commons, and made the following Resolution:

Die Lunæ 27 Martii, 1704.

It is Resolved and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That the House of Commons taking upon them by their Votes to condemn a Judgment of the House of Lords, given in a Cause depending before this House in the last Session of Parliament, upon the Petition of *Thomas Lord Wharton*, and to declare what the Law is, in Contradiction to the Proceedings of the House of Lords, is without Precedent, unreasonable, and an Usurpation of a Jurisdiction, to which they have no Sort of a Pretence.

March Twelfth,
Clk Parliamentor.

LIII. The Trial of Nathaniel Denew, Gent. John Merriam, Gent. and Richard Britton, Gent. at the Queen's-Bench Bar, for an Assault and Conspiracy, with an Intent to Wound and Beat, &c. William Colepeper, Esq. before the Lord Chief-Justice Holt, Feb. 14, 1703-4.

[Published (from the Trial taken in Short-Hand) by Mr. Colepeper.]

THE QUEEN Plaintiff,

AGAINST

DENEW, and others, Defendants.

Tried at the Queen's-Bench, before the Lord Chief-Justice Holt, Feb. 14, 1703-4.

AFTER Proclamation made for Silence, the Jury was Sworn, whose Names are as follow:

Richard Bealing,
Thomas Dail,
John Mills,
Robert Rogers,
John Norton,
John Wynter,

Richard Davison,
Edward Smith,
Edmond Bannet,
Andrew Cook,
John Hest,
John Glover.

Proclamation was made for all concerned in the Trial to appear.

Then the Record was read as follows:

Midd^{le} II. *THE Jurors for our Sovereign Lady the Queen protest, That Nathaniel Denew, late of the Parish of St. Clement Dunes, in the County aforesaid, Gent. John Merriam, late of that Parish, in the*

said County, Gent. and Richard Britton, late of the same Parish, in the same County, Gent. being Fighters, Swords-men, and Dishonors of the Peace, and being versed in fighting Duels, on the 21st Day of August, in the second Year of the Reign of our Sovereign Lady Anne, by the Grace of God, of England, Scotland, France, and Ireland, Queens, Defenders of the Faith, &c. did, in the Parish of Clement Dunes, in the said County of Midd^{le}, unlawfully, feloniously, deceitfully, wickedly, and maliciously, under Pretence of Disput^{ed} Points, and Contention between Sir George Rooke, Knt. & One of His Majesty's Most Honourable Privy-Council, and William Colepeper, Esq. then and before now's, Just, and lawful, judiciously, prudently, and intend, and did among themselves, and others in the Towns aforesaid, confederate and conspire, and each of them did maliciously, perfidiously, and intend to kill, wound, and evilly treat the said William Colepeper, and him the said William Colepeper, either by Duel or otherwise, feloniously and maliciously to kill and murder. And that afterwards, that is to say, on the 21st of August, in the Year aforesaid, about the Hour of Ten in the Forenoon of the same Day, in the Parish and County aforesaid, the said William Colepeper being in the Power of God and the Queen, came the said Nathaniel Denew, with Force and Arms, and lying in wait of his Malice first-thought, and doleful premeditation, then and there offered himself to fight a mortal Duel, in Behalf (as he said) of the said Sir George Rooke, against the said William Colepeper, and with threatening, spiteful, and abusive Words

* *De Luna 27 Martii, 1704.* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Declaration made the Day, with respect to the Votes of the House of Commons, as relation to the Judgment of that House, given upon the Petition of *Thomas Lord Wharton*, the last Session of Parliament, shall be without Precedent, and unreasonable. *March Twelfth, Clk Parliamentor.*

† When Mr. Colepeper stood for Knight of the Shire for Kent, Sir George Rooke vigorously oppos'd him, and wrote Letters to some of the Freeholders of that County, importing, "That he hoped they would not give their Votes for a Man who had carried up a Petition (Mr. Colepeper being one of the Knights Petitioners) that had been condemn'd feloniously, deceitfully, and sedulously, by an English Parliament." This was the first Occasion of the Quarrel between them.

Case. S. J. A. And when you refused it, what did he say then?
Mr. Colp. Says he, the Quærel is publick in its Nature, Sir George Rest is in the Flower of *Kear*, and there are above Twenty Friends depending upon him; and, says he, Come out, I will stand by him. I told him, it was an unworthy of him to tender such a Pledge, and I would lose the last Drop of my Blood before I would sign it.
Case. S. J. A. What did he say then?
Mr. Colp. Then, says he, you'll be infusled.
L. C. J. Then you did not hear Mr. Merriam say any thing, or do any thing?
Mr. Colp. Yes, my Lord, I saw him make a Motion, when Mr. Denew said, Here is Mr. Merriam, and I have another Friend hand by. And after the Scuffle was over, I met Mr. Britton hand by.
L. C. J. How far?
Mr. Colp. It was near Temple-Bar.
L. C. J. This Side, or the other?
Mr. Colp. Just this Side, coming through as it were. I was first overtaken by Mr. Denew near St. Clement's Church.
L. C. J. What Time of the Day was this?
Mr. Colp. It was during the Time of Divine Service.
L. C. J. Where were you going?
Mr. Colp. My Lord, I am a Man, as other Men are; I thought myself most barbarously used, and since I had made this Agreement with Sir George Rest, to give him Satisfaction upon the Coast of Holland, I went to tell Mr. Britton, that if he would go over with Sir George Rest, I would speak with him after I had spoke with Sir George Rest.
L. C. J. I ask you where you were going then?
Mr. Colp. I was going from my Lodging to beyond St. Clement's Church.
L. C. J. Upon what Occasion?
Mr. Colp. My Lord, to speak with Mr. Britton.
L. C. J. Did he lodge thereabouts?
Mr. Colp. Yes, my Lord, I think in *Byford-Court*. I was in so much Passion, that as I went in, I felt not the Ground that I trod upon.
Case. S. J. A. How soon after Mr. Britton was gone from you did you go out?
Mr. Colp. Immediately.
Case. S. J. A. How soon after that did you see Mr. Denew?
Mr. Colp. Immediately he overtook me.
L. C. J. What need had you to go after Mr. Britton? You had seen him just before at your Chambers; you say you went to speak with Mr. Britton; you say he was just before at your Lodgings; Why did you not tell him so then?
Mr. Colp. My Lord, my Passion began to rise afterwards, upon the Reflection.
L. C. J. Had you not told him as much before?
Mr. Colp. Yes, my Lord, but I had not bid him prepare to go, and that I would take him after Sir George Rest to Holland.
L. C. J. Did you intend to tell him, that you would meet with him in Holland, and deal with him after Sir George Rest?
Mr. Colp. I did so.
L. C. J. Did you go after Mr. Britton, to attack him immediately?
Mr. Colp. Yes, my Lord; but always on the defensive Part here.
Case. S. J. A. How far from your Lodgings did Mr. Denew stand?
Mr. Colp. I lodge in *Coil-Street*, and he overtook me about St. Clement's Church; and he ran. Mr. Merriam was with him at that Time, and he pointed at him as a sower; I apprehended Mr. Merriam to be one of them.
Case. S. J. A. Was he the first Day Mr. Denew came to you?
Mr. Colp. Yes, the first Day.
L. C. J. Did Mr. Merriam say any thing to you?
Mr. Colp. No, my Lord.
L. C. J. Did he hear what Mr. Denew said to you?
Mr. Colp. Yes, my Lord, at the Time of the Assault.
L. C. J. But the first Time?
Mr. Colp. No, my Lord; he gave me a withful Look at going into the Coffee-House.
Case. S. J. A. Did he lay his Hand upon his Sword, or any thing?
Mr. Colp. No; I believe not.
Case. S. J. A. That is not far: Pray, Sir, be pleased to answer me a Question or two. You say you was going to Mr. Britton's; Was it not with a Design to challenge him? You say likewise, Your Passion was so high, you did not well conceive what you did, Did you not design to challenge him then?
Mr. Colp. No neither to challenge, nor to quarrel with him instantly. But I told Sir George Rest, at parting, that I hoped he would change his Resolution; but, said I, if you persist in it, I will wait upon you; and if he would persist in the Resolution, then I thought, that since Mr. Britton had used me in this Manner, he was sower than another, that was an innocent Person.
Case. S. J. A. I think you say you had a Challenge from Sir George Rest; Was it in Writing, or by Word of Mouth?
Mr. Colp. By Word of Mouth, by Mr. Denew.
Case. S. J. A. You say, Mr. Denew overtook you by St. Clement's; Do you apprehend that they came thicker to meet with you?
Mr. Colp. I apprehended it wherever I went; I looked to be attacked in the Street, and I told Mr. Denew, and desired him to be with me, and take Notice, that I was upon the Defensive, for there will be Swords drawn.
Case. S. J. A. You say you lodged in *Coil-Street*? How could you think to meet them there? Did you think they would be in wait?
Mr. Colp. Yes, and that they were waiting for me every where: When I awoke in the Morning, and looked from my Lodgings, I saw four Persons stand at the End of *Coil-Street*, and bid, and ran: I apprehended were Sowers.
Case. S. J. A. Mr. Calverley, the 21st, you say, was the first Time that you had any Discourse with these People. Did you not send to Mr. Denew to come to your Chamber?
Mr. Colp. No.
Case. S. J. A. At Eleven o'Clock, you say, you came at Eleven to your Chambers, and accordingly he came: My Reason was, I found he would make a Quærel of it, if I disappointed him but a Moment.
Case. S. J. A. Did you not send your Servant for him?
Mr. Colp. No, I sent my Servant to the Coffee-House, to see whether he was there.
Case. S. J. A. Did you not feed for Mr. Britton?

Mr. Colp. No, I believe my Sister did; she thought him to be a Peace-maker, as he pretended himself to be.
Case. S. J. A. Give me Leave to ask you one Question. You say you were in great Passion, you thought yourself likely to be attack'd, Why then did you go out that Morning to Mr. Britton's?
Mr. Colp. I have given you an Account of that already, I was provoked more than human Nature could bear.
L. C. J. He says, that what Mr. Britton had offered to him; made him to be further engaged, and went after him to acquiesce him, that after he had dissuaded Sir George Rest, he would engage with him.
Mr. Colp. I don't know what I should have said to him; but that, my Lord, were my present Thoughts.
Case. S. J. A. When Mr. Denew met with you, Were there not some hard Words that passed between you two?
Mr. Colp. No, not any on my Part.
Case. S. J. A. Did you not give him some abusive Language?
Mr. Colp. I did not, Sir; he called me Scoundrel and Rascal, but I made no Return to him.
Case. S. J. A. But when he came to your Chamber at Ten o'Clock at Night, did you not tell him that you had been at Sir George Rest's, and that he had used you like a Scoundrel; and that you believed him to be like him?
Mr. Colp. No, nothing of that. I have not seen Sir George Rest, I said, and I believe he desired himself.
Case. S. J. A. Pray, Mr. Calverley, the first Time Mr. Denew, you said, said nothing that was unkind to you: Then he only fairly delivered to you a Message.
Mr. Colp. And that Sir George Rest had Friends; and, that there would be a Way found out for that.
Case. S. J. A. What sort of Reposement had Mr. Britton? Is he used to fight Duels? Is he famous for Duelling?
Mr. Colp. I know nothing of him: He is my Country-man, but I live a great Way from him.
Case. S. J. A. What Age is he of?
Mr. Colp. He is an able, strong Man of his Age. He is in Court, you may be him.
Case. S. J. A. I ask you, on your Oath, upon the Time you admit he, Mr. Denew, was civil, did he give any Reflections at first?
Mr. Colp. He did not call me scoundrel and Rascal the first Time.
Case. S. J. A. You admit, the first Time he was civil?
Mr. Colp. No, Sir, he gave me several Reflections, but did not call me Scoundrel and Rascal at the first.
L. C. J. Who did not?
Mr. Colp. Mr. Denew did not, at the first Time.
L. C. J. Did he ever call you so?
Mr. Colp. Yes, my Lord, at the Time of the Assault.
Case. S. J. A. Which call you the second Time?
Mr. Colp. When he came to my Chamber at Eleven o'Clock in the Morning, that was the second Time, then he would quarrel with me, because, as he said, I disappointed Sir George Rest.
L. C. J. When was this?
Mr. Colp. Saturday Morning, at 11 o'Clock.
Case. S. J. A. You say he went away satisfied?
Mr. Colp. I do not say he was satisfied.
Case. S. J. A. I ask you upon your Oath, the third Time, Whether there was not angry Words on both Sides? You gave him reproachful Language, and asked him what he had to do there at Ten o'Clock at Night? I think this was so?
Mr. Colp. There was some on my Side: He said that he might and it: I said I had been with Sir George Rest, and I was of Opinion that he was at home, and deny'd himself.
L. C. J. That was Sunday Morning.
Mr. Colp. No, my Lord, I had been there Saturday Afternoon, and they said he was not at home then: This Gentleman said, Whether I did not, at 10 o'Clock at Night, give Mr. Denew bad Words? I said, No.
Case. S. J. A. Did he quarrel with you on his own Account?
Mr. Colp. No, he declared it was upon Sir George Rest's Account; and said he would take the Quærel upon himself.
Case. S. J. A. The third Time I thought you said he quarrelled with you upon his own Account?
Mr. Colp. Yes, on Sunday, then I spread my Hands out, I asked him what Quærel he had with me? Said I, What is your Quærel with me?
Case. S. J. A. You spread your Hands out thus, and spoke the loud.
Case. S. J. A. Was that all?
Mr. Colp. Yes: Then I asked him, said I, Sir, is this a Reason you must shed my Blood, or put me under the Necessity of shedding yours?
L. C. J. When was that?
Mr. Colp. On Sunday Morning, when he overtook me.
Case. S. J. A. The Quærel I would ask you by this: You have said, Sir, that Mr. Denew overtook you by Little Drury-End?
Mr. Colp. No, Sir, he overtook me behind St. Clement's Church.
Case. S. J. A. Then, pray, Sir, when you had some Paspas with him, I would ask you upon your Oath, who drew the first Sword?
Case. S. J. A. He told you that before.
L. C. J. He has told you the Manner of it.
Mr. Colp. I'll tell you again: Says I, you have Skill in Fencing, that is enough; you must lay down your Case: With that, he took up his Case to strike, I then dropped back to draw, and he was slower than I, because his Case hindered him.
Case. S. J. A. They who made the first Pals?
Mr. Colp. I cannot tell, I stood my Ground, he came up at me.
Case. S. J. A. I thought you said you made the first Pals at Mr. Denew.
L. C. J. He told you the Manner: He said he drew his Sword, and went back, and Mr. Denew came up to him.
Case. S. J. A. I would know who made the first Pals? You say you threw your Hat at him?
Mr. Colp. Yes, I did afterwards.
Case. S. J. A. But was it not you that made the first Pals?
Mr. Colp. Indeed I cannot tell; if there was any Advantage, I believe I might take it.
Case. S. J. A. Where was the Place proposed for your Fighting with Mr. Denew?
Case. S. J. A. There was no Place; he way-laid him.

Mr. Colp.

Mr. C. P. He let it rest in air, and would not let me stir a Foot from him; but I did not intend to run away from him.

Coat. Def. But you said you design'd to meet Sir George Rusk in Holland.

Mr. C. P. Yes.

Coat. Def. Then how came it to pass you did not meet him?

Mr. C. P. Because I think Sir George Rusk had not intend me as a Gentleman, and I don't think my self oblig'd to observe Rules of Honour with him.

Coat. Plaintiff. That is not fair.

Coat. Def. Had not Mr. Deane his Case in his Hand, when he fought you?

Mr. C. P. Yes I am glad you ask me that Question: He held his Case in his Left Hand, and I found it inconvenient in my Fencing; said I, Coward, lay down your Case, but he kept it in his Hand; said English People love to Play, and thou that stood behind him, cry'd out, Lay down your Case; and then he fumbled to lay down his Case, and I threw my Fencer at him, and made a Pass at him: Thou after four or five Passes.

Coat. Def. I beg the Favour of you to ask you one Question, You say the Place you saw Mr. Deane fight was the Top-Shop?

Mr. C. P. Yes.

Coat. Def. Is it not an usual Place where Gentlemen used to stand?

Mr. C. P. Yes.

Coat. Plaintiff. When you were going along the Back-side of St. Clement's Church, I ask you in what Manner did Mr. Deane come after you? Did he walk very fast, or ran he?—Mr. C. P. He ran.

Coat. Deane. Did Mr. Deane run?

Mr. C. P. I did not see him till he came up to me.

Coat. Def. I ask you this: At the Time you drew your Sword, did he offer to strike at you first?

L. C. J. Has he not told you plainly?

Mr. Deane. Yes.

Coat. Plaintiff. Pray, Madam, will you be pleas'd to acquaint my Lord and the Jury what you know concerning this Matter, and what pass'd between your Brother, Mr. Colepeper, and Mr. Deane, at his first coming to him?—Mrs. Sted. On the 21st of August—

Coat. Deane. Speak as loud as you can.

Mrs. Sted. On the 21st of August, my Lord, I went to the Temple to my Brother's Chamber, to go along with me into the Country, according to his own Appointment; and my Brother was not at all ready, at which I was mightily surpris'd; but my Brother was refus'd to me, and I could not tell the Reason: I was forth to leave him in Town, because he had several Immortals in the Country, that he was mightily engag'd after: So that, at length, I did find out, that there was some Danger in the City; and sent my Coach and Equipage to Mr. Sted into the Country, that he might not come up to expose himself to Danger too: At length, while I was at my Brother's Chamber, about 11 o'Clock, a Gentleman came to the Door, whom I knew understand to be Mr. Deane, and though I could not hear distinctly what he said, but something about *Honour, justice, and Honour*, and *praise in Time*; my Brother answer'd, That he had a Respect to Sir George Rusk, and Sir Jacob Banks, on the Account of the Ladies they had married, and the Family he had married into, and never meant him Wrong.

Coat. Plaintiff. Say that again, what your Brother said to Mr. Deane in relation to Sir George Rusk?

Mrs. Sted. I heard him say he had Respect for them on the Account of the Ladies they had married; and never had the least Intention to affront or wrong them.

Coat. Plaintiff. What said Mr. Deane to the Matter?

Mrs. Sted. I do not know, I know so far as the Temple. We went afterwards to Coit-Street, and my Brother sent a Letter to Sir George Rusk, and the Message that was brought back, was, That he expected him at his House, or would send immediately after him; and quietly after, Mr. Deane came, and my Brother was gone out, then I thought it would be Time well spent to have Mr. Deane in my Lodging: Of myself I fancy'd, that while my Brother was absent, he would come. I knew my Brother was at *Jack's Coffee-House* in *Coit-Street*, and I sent my Brother Word, Mr. Deane was with me: I ask'd him if he wanted to speak with Mr. Sted, my Husband? He said, No, it was with Mr. Colepeper, him he wanted to speak to: I told I had sent to him, and soon after Mr. Deane wanted to be gone; and I said, It will make but a Comedy of Errors to go when I had sent and expected him to return; so Mr. Deane, after some Time spent, went away: He said, That was but one Coffee-House in the Strand, and there he was to be spoken with: Just after he was gone, I went to seek after my Brother, and just as I was taking Coach with Mrs. Harlequin, Mr. Britton came, and ask'd after my Brother, Whether he was there, or at the Temple? I promis'd he should know where he was, so I took Coach; and when I could not find my Brother, I return'd. My Brother came to my Lodgings, with Mr. Deane, a French Gentleman, who speaks English very ill, about dark; and a little while after, my Brother sent to Mr. Deane, to the Coffee-House in the Dining-Room, says he, Mr. Colepeper, I will speak with you in private. Says he, You may speak here: No, says Mr. Deane, you must come out: Says my Brother, I have been with Sir George Rusk, and I could not find him; either he denied himself, or was not at Home: Says Mr. Deane, That shall not serve your Turn, let us make an End of it now: Says he, Come out; God I will have you out; God I will have you out. There was a Multiplicity of Words, but my Brother was civil and respectful to all the while, and Mr. Deane managed somewhat upon the Stage, and went off. The next Morning my Brother went very early, as contrary to my Design very much, he went to wait upon Sir George Rusk: I was full of Error at that, and thought of nothing else, but to Surgeons heal the Wounds and Stabs. I knew nothing how Matters went, to my Brother return'd, and about Nine o'Clock Mr. Britton came again.

L. C. J. Where?

Mrs. Sted. To my Brother's and my Lodgings in Coit-Street; and he came over Night for my Brother, and not finding him, and doubting whether he would be at the Temple, or at Coit-Street, I sent a Messenger to seek him he was at Coit-Street, and I thought him to be a Mediator, or else I should not have introduced him to my Brother; so when he came in, he desired that Mr. Britton, and my Woman would withdraw.

Vox. VIII.

Coat. Deane. Who desired this?

Mrs. Sted. Mr. Britton desired the Woman to withdraw, of whom I was one, Mrs. Harlequin, and I stood at the Door, to hear what we could, being very inquisitive in so hurried a Case; and I heard them read something, but what that I could not tell, but my Brother told me since, it was Colonel Seymour's Affidavit.

L. C. J. Where was all this?

Mrs. Sted. At Coit-Street, about Nine o'Clock a Sunday-Morning: I heard him proceed to be a Mediator, he said he was a Mediator, and that he had a Paper, which if my Brother would sign, all would be well, and if he would refuse himself he must fight it; I did not hear what the Paper was, but my Brother said him, that was essentially of him, as a Mediator, to tender to him first a Paper, which he look'd upon as immortals, and would rather do than sign it: Then, says he, you'll be satisfied; then, says my Brother, I shall defend myself.

Coat. Deane. What did he say then?

Mrs. Sted. He said, Sir George Rusk was the Flower of Kent, and the Quard was of a publick Nature; and for his Part, he would stand and fall by him, and would Twenty more.

Coat. Deane. Did he talk of any Satisfaction he had?

Mrs. Sted. He said he would stand and fall by him, and so would Twenty more.

Coat. Def. I hope you will not put Questions in her Mouth.

Another for Def. You do not ask for Questions.

L. C. J. She has not asked very fast, pray don't quarrel.

Coat. Deane. When did he say father?

Mrs. Sted. Mr. Britton came to the Door, he bid my Brother not to be in a Passion, I wondered he desired my Brother not to be in a Passion: Said I to my Brother, Will you not get to the Stairs with him? Says he, A Villain, he has challeng'd me out.

Coat. Deane. What time of the Day was this?

Mrs. Sted. About 9 or 10 o'Clock.

Coat. Deane. When did your Brother go out?

Mrs. Sted. He went out immediately after that, and told me he was going to drink a Dish of Coffee: I was full of Concern, for Mr. Deane over Night had challeng'd my Brother out, and said he had a Friend below in a Hackney Coach.

Coat. Deane. When did he go?

Mrs. Sted. Mr. Deane said he had a Man in the Coach below; a Friend he had too, as well as my Brother.

L. C. J. Where was this?

Mrs. Sted. It was at my Lodging in Coit-Street.

L. C. J. Indeed I mis took, for I thought it was at Mr. Colepeper's Chamber.

Mrs. Sted. No, my Lord, it was in Coit-Street, and when Mr. Britton was going: Said I, Brother, do not you attend him to the Stairs? as I thought in point of Civility he ought to do: Says my Brother, a Villain, he has just now challeng'd me out.

L. C. J. Who said to—Mrs. Sted. My Brother said so.

L. C. J. Who did he say was a Villain?

Mrs. Sted. My Lord, I said to my Brother, Why do not you wait on Mr. Britton to the Stairs? Says my Brother, a Villain, he has challeng'd me.

Coat. Deane. Pray give an Account of what pass'd over Night between you and your Brother.

Mrs. Sted. I have spoken to it already; if you will have it again, I will repeat it.

L. C. J. She hath said it: Have you any more, Madam?

Mrs. Sted. I have done with that, my Lord. Just after Mr. Britton had left my Brother, Mr. Britton, an honest Gentleman and Friend of ours, went out with my Brother, and quickly return'd, and told me of the Affidavit my Brother had had in the Strand; and that Mr. Deane had said, my Brother had been too free in his Tongue with Sir George Rusk.

Coat. Def. You say, your Brother said, the Villain challeng'd me; but you did not hear Mr. Britton make any Challenge at all?

Mrs. Sted. He said he would stand and fall by Sir George Rusk.

L. C. J. He said he would be satisfied; that he would stand and fall with him.

Coat. Deane. And that Twenty more were engag'd; that they would make an End of it now.

Coat. Def. Madam, you were pleas'd to say, you apprehended Mr. Britton to be a Mediator: Pray, what Reason had you for thinking so?

Mrs. Sted. Because, Sir, he had been, when I was a Child, with my Father very civilly and friendly, and he was a Man more in Years, I thought, than to undertake such a Bully-Action.

Coat. Def. Then pray, do you know any thing of Mr. Britton's being sent for to make up?

Mrs. Sted. I said sent for him by my Brother's Servant, because he desired the Night before to know where my Brother was.

L. C. J. When did he come to you?

Mrs. Sted. My Lord, he came Saturday in the Afternoon, to know whether my Brother was to be spoken with at the Temple, or Coit-Street, or where: I told him he should know if he had a mind to sit, and apprehending him to be a Mediator, I sent to him.

Coat. Def. In whose Name did you send to him?

Mrs. Sted. I did not mention any Name, but that my Brother was now in Coit-Street.

Coat. Def. Did you yourself feel, or know of his being sent for more than once, or how?—Mrs. Sted. Never, I dare say, but that one Time.

Coat. Deane. I would only ask you this Question, Was there any talk of making an End?—Mrs. Sted. Yes.

Coat. Deane. I only ask you this, at the Time he refused the Paper, did he talk of making an End of it?

Mrs. Sted. He said, they might make an End of it now, it was not so plain as Make and Fight; but that he would make an End of it now.

L. C. J. Make an End of it now, Who said so?

Mrs. Sted. Mr. Britton.

Coat. Def. What did you mean by that? Your Brother did not understand him; he thought that if your Brother would sign that Paper, that that would make a speedy End.

Mrs. Sted.

Coar. Def. What did Mr. Deane say when they were going to draw? *Bea.* I was not about it, it was a great way off.

Coar. Def. With Mr. Gorge's case to you, or first for you, did not tell you the reason why he first for you?

Bea. I apprehend Mr. Reed had first for me.

Coar. Def. You went along with Mr. Colepeper? *Bea.* Yes, I did so.

Coar. Def. What did he tell you he was going to do?

Bea. He said he was going to speak with Mr. Deane, he told me he desired to see him, I told him to go in to him, to meet with Sir George Reed, and he said he would call him to-morrow, and that he had fought with Sir George Reed, he would fight with Mr. Deane.

Coar. Def. Did he say, upon your Oath, say he went to challenge Deane?

Bea. No, I do not remember that.

Coar. Def. Did you observe any Case in the Hand of Deane?

Bea. Yes.

Coar. Def. How did he dispose of it?

Bea. He said he had it down.

Coar. Def. Was he called first? *Bea.* I do not know.

Coar. Def. Did Mr. Deane pass before he parted with his Case?

Bea. Yes, he did.

L. G. J. I ask you this Question: Mr. Reed, did not Mr. Deane lift up his Case in Mr. Colepeper, before any Sword was drawn? Did you see that? *Bea.* No, I did not for that, I was at some Distance, and in a little bit of a Confusion.

L. G. J. How far was you behind?

Bea. I believe half the Length of this Hall.

Coar. Def. When Mr. Colepeper drew his Sword, did he make up to Mr. Deane, or retire back? *Bea.* He retired back first.

Coar. Def. Upon your Oath, did he offer to make any Pass at Mr. Deane, till Mr. Deane came up with his Sword drawn?

Bea. I did not observe that.

Coar. Def. Mr. Colepeper retired, and Mr. Deane came forwards?

Bea. Yes.

Coar. Def. Did he not throw his Hat before any pass?

Bea. I did not for that.

Coar. Def. Did he not throw his Wig before any Pass?

Bea. No, the Wig was left off.

Coar. Def. What did Mr. Colepeper do then?

Bea. Mr. Deane said it was not fair; Yes, says Mr. Colepeper, it is, and I will take all Advantages against Adversities, as I take you to be lost Sir George Reed.

Coar. Def. What was done after the Scuffle?

Bea. They ran away, they one Way, and we another; this was at the May-Pole in the Street. We met Mr. Brewster at Temple-Bar.

Coar. Def. At the Time they met at Temple-Bar, did Mr. Colepeper decline?

Bea. He said he had been with Sir George Reed, and had given him Satisfaction.

Mr. Wells speaking for the Defendant.

I am in this Court, my Lord, for the Defendants, and as for Mr. Deane, I think here is nothing that they offer can assist him, as to my Challenge that he gave: He was in Company, 'tis true; he did not strike any good Advice, he did lay indeed at left, Mr. Colepeper must have a Care what he said; and, I think, it was good Advice if he had been well taken. And as to the other Two, Mr. Colepeper you have heard in the material Evidence in this Matter. Gentlemen, you will observe who are the Witnesses; and what are the Circumstances of this Fact. It is, my Lord, a thing we cannot possibly be provided with many Witnesses in, being trusted between Mr. Colepeper and these Gentlemen, therefore we have the Disadvantage in this Case, because the Law does lay, I must own, that Mr. Colepeper is allowed to be a Witness, but we cannot be Witnesses, for ourselves, in the Matter; and it being a private Transaction, it is not to be presumed that we can make any good Defence, nor have any positive Witnesses; but that there was a Quarrel between himself and Sir George Reed, is declared by them: And I believe every provoking Language hath been given by Mr. Colepeper, which might occasion what hath happened. As for Mr. Deane, he is a Gentleman of very good Fortune, a Gentleman of Estate and Quality; a Justice of the Peace in the Country, and not such a kind of Person as Mr. Colepeper would represent him to be: He is a Person that Sir George Reed hath an intimacy with, and he had for a great while together. Being at Sir George Reed's House the 21st of April, the Day that is fixed upon, then truly Sir George Reed said, Mr. Colepeper had highly offended him, and he did say he would give him some Satisfaction for what he had done; upon that we do agree that Mr. Deane, as from Sir George Reed did go in the Morning to expostulate with Mr. Colepeper the Reason of this Usage; he met him at the Temple-Gate, and acquainted him with it; says he, I cannot come to you these two Hours, if you go into the Review Coffee-House, and stay two Hours, I'll come; but he did not come. And Mr. Colepeper, as much Apprehension as he had from these Allusions, sent for this Gentleman up to his Chamber in the Morning, and when he came, it is true what Mr. Colepeper says, That he said, he had said nothing of Sir George Reed, but that he was a very honest Gentleman.

Mr. Cole. I did not say that neither.

Mr. Wells. Says he, If you will say that, I believe Sir George Reed will go it up; for Sir George Reed is a Man that will have his Honour vindicated, for it is not in such Language as you have spoken that he is spoken of. Says he, If you will say so Sir George Reed, I shall be glad, because I believe there will be an End of it. No truly, Mr. Colepeper could not go then, but two Hours after he would go: Says Mr. Deane, You say you will come within these two Hours, but will you go certainly at the two Hours End? Yes, said he, I will be there within two Hours; then, says he, I have nothing to say, I am very glad you design it. My Lord, he afterwards, as he frequently did, died with Sir George Reed.

Mr. Deane, you may think, did acquaint him with what passed between Mr. Colepeper and him, and about two o'clock, after Dinner, there came a Message from Mr. Colepeper to Sir George Reed, to tell him, that he could not meet him then, but he would meet him at five o'clock, which is the Time Mr. Colepeper is agreed he was to meet.

Truly Mr. Colepeper did not come according to his Appointment, and Mr. Deane, says he, I have trouble, and do not come according to his Promise and Appointment, and then these came a Man with a Letter from Mr. Colepeper, a Message he his Servant: It was, That he could not come then, at five o'clock; I say he, if you would needs have me meet you, it is upon a Time and Place, if you will say upon it, I will not fail. Upon that, Mr. Deane being there, I tell him, says Sir George Reed, I'll go to the Court at five o'clock, and I'll tell you as he comes, for I have a great deal to say to you, and I'll tell you the Truth of this Matter that is spoken to much about.

He went, and he was not at Home, and he said till ten o'clock at Night, and then he came up into the Chamber. Mr. Colepeper was in another Room, as Mr. Colepeper hearing his Voice, says, did not come to him, but he came to a Pair of Stairs higher. Mr. Deane came up, Mr. Colepeper, holding the Door as his Hand, would a little, and he came in.

Upon that, Sir George Reed says Mr. Colepeper, You know I will fight you, well enough, said Mr. Deane. He told him, that he could fight Sir George Reed, he said, that he had no Business with him, but he would fight him, and he did say something, but I could not hear him, for at that time he was, but would not for him, and he began to be a little angry; he took this Mr. Deane to be a cowardly fellow too, and he would have nothing to say to him. Mr. Deane said, my Lord, he did not expect such Language as that was; and I answer your Quarrel, said he, may be with Sir George Reed, he so saying, he gave me Provocation. Says he, If you have been with Sir George Reed, you have heard the Matter, and shall not talk of it, but since you have given me such provoking Language, you cannot expect I should take it very calmly; and away went he. The next Morning, my Lord, by pure Chance, about Temp o'clock, he saw Mr. Colepeper in his Palace, and there he told him, says he, You may remember the Language you gave me last Night, it is not such Language that one Gentleman ought to give to another, and you must consider, and learn to be wiser. Says Mr. Colepeper, What need have you to trouble yourself with Sir George Reed's Business, when I have been with him? Says he, I am not such a Gentleman that I concern myself about; and upon that, there was a short part of a Challenge upon his own Account. But the next Evening, I tell you, it was not the intention of that, but that he desired to fight the Duel on Sir George Reed's Behalf, for this Quarrel was upon the Account of that Gentleman himself. When he came to other Witnesses, that Gentleman who came last, he tells you, That it was upon his own Account, and not upon the Account of Sir George Reed. So this is far as there were any Witnesses present, so far they give you that Account.

My Lord, as to this Mr. Deane, there is no great Matter fixed upon in this Case, they do own, that Mr. Deane was taken up as a Friend, and Mr. Colepeper's different to him as a Mediator, the looked upon him as a Friend, and did not think so, for indeed, he was so purely in this Matter, and had no Design to Enmity against Mr. Colepeper; but having that had been such a Provocation, he was so angry to see him, that Sir George Reed was angry, and he would have him make up this Matter, and sign an Acknowledgment, but he would not; and thereupon he said, Sir George Reed was the Darling of Reed, and he would be satisfied if he would not sign that Paper; every one would expose him Quarrel, and be among the rest, if he would not acknowledge that Rudeness. My Lord, this is no Challenge, Mr. Deane only told what the Event would be, if he did not make Acknowledgment for that Offence; every Gentleman would expose Sir George Reed's Quarrel; this was only to show the Reason Sir George Reed had in the Country, that Mr. Colepeper would be satisfied, not by Sir George Reed, but by the Country, and he might well think so, if it were true what is reported of Mr. Colepeper, in reference to Sir George Reed. But he told him what he believed the Consequence would be, and he came purely as a Friend, and nothing else; so that, my Lord, there is nothing to be fixed, that he challenged Mr. Colepeper to fight upon Sir George Reed's Account, he came purely as a Friend, and nothing else. Your Lordship hears that they would inform, that these Gentlemen lay in wait, and were hired on purpose to affront and assault this Gentleman, and that they were Men fit for such evil Practices and Designs; but there is nothing that hath been proved of that. These Ladies talk of Stories they heard in the Country; and if they had a Mind to assault Mr. Colepeper, he was at his Chambers, and he might well be afraid of what need they be much to do. And even this very Day he went abroad about this Battle business.

But, my Lord, how could it be possible this should be otherwise than Chance? Mr. Colepeper, he lodged in Court Street, in the Street, they met him at White-Chapel, near St. Clement's Church; it could not be presumed, that they should be in wait there, expecting to meet with him, so that the very Circumstance of the Place showed there could be no Design of their meeting him in that Place; for how could they suppose he should come there, after he lodged in Court Street? And then, my Lord, it shows he had not this Apprehension of Danger, that he was not so much concerned, as he would have been, if he was immediately out, took two or three with him. It was no challenge this Morning; but he would make you believe it was not a private Challenge, but after he had fought with Sir George Reed in Holborn, he would fight with this Gentleman there; so that, my Lord, this shows he was far from this Apprehension of Danger as he hath pretended. We shall call two Noble Lords to these Gentlemen's Reputations, that will give an Account of these Gentlemen, that they are no such men as they pretend; and then we hope, though it is our Misfortune not to have Witnesses, the Matter will be taken, as in all Probability it was.

L. G. J. Mr. Wells, say till me the Affairs Mr. Colepeper gave Mr. Deane? *Mr. Wells.* I did open it to your Lordship.

* Not true, one offered to be proved; but being not to the Point, was let pass, as every other Thing for the Cause.

L. C. J. It was not plain enough for me to see.
 Mr. Hall. I am sorry for that, my Lord, it is often my Misfortune; but, with humble Submission, it was at Ten o'Clock at Night when he came; he told Mr. Denew, he had been with Sir George Raol. Mr. Colpeper said, says he, I have been with Sir George Raol, but like a Scoundrel Fellow he denied himself at home, and you are both another Scoundrel.

L. C. J. And he say that to—Mr. Bristow. Very, my Lord, he did.
 Caus. Denew. Have you any Evidence of that?

Mr. Hall. My Lord, we have nothing but Mr. Denew, and he will give his Oath on it, as well as Mr. Colpeper his Oath to the contrary.

L. C. J. Mr. Colpeper, you deny your Oath? Did you say Sir George Raol was a Scoundrel Fellow for doing as himself?

Mr. Colpeper. Needs, neither then, nor in my whole Life.

L. C. J. Did you say Mr. Denew was a Scoundrel Fellow?

Mr. Colpeper. No, my Lord, never: I saw that Mr. Denew wanted a Colour, and I was relucant not to give him one.

Another Charge for the Defendants.

My Lord, it cannot be recalled, as this Cause stands, that we can be able to see much Evidence. If we could do so, I would not take up your Lordship's Time with my Observations of my own; but I think it is very observable upon the last-mentioned, that the Gentlemen on the other Side have chosen even to Leave to make an Answer to what was said, in reliance to the Defendants.

L. C. J. You had best to call what Witnesses you have; and then if you have a mind to make Observations you may.

Caus. Denew. My Lord, we wish still to have Leave to introduce another Piece of Evidence, the Paper that I have at my Head.

Chief Lord asked.

Caus. Denew. We would first beg Leave to show how Mr. Bristow went to Mr. Colpeper and the Gentlemen that we shall bring, that he showed the Paper to fill: I believe, my Lord, it will appear there was nothing in the Paper but what any Gentleman might say.

Caus. Denew. (Speaking to Chief Lord.) Did Mr. Bristow show you that Paper at any Time, and on what Account?

Chief Lord. Mr. Bristow and I was at the Coffee-House upon the 21st of August, talking of the Behaviour of Mr. Colpeper in Sir George Raol: Considering the different Characters of their Gentlemen, we thought it advisable to have an Accommodation; and in order thereto, we proposed the drawing up of a Paper; Mr. Bristow drew it up, and upon Perusal I approved of it, and did think there was nothing in it but what Mr. Colpeper, or any Gentleman, might for their Heads to, without any Reflection upon their Reputation, and thought Sir George Raol would accept of it; and accordingly Mr. Bristow went, and said Mr. Colpeper was not at home. My Lord, I believe this is the Paper.

Caus. Denew. But I suppose Mr. Colpeper would not sign that Paper: What then?

Chief Lord. There was not a Word spoken of that.
 Caus. Denew. How many Gentlemen were there talking over this Matter?
 Chief Lord. Nobody but Mr. Bristow and myself that I know in the Room there were some other, but no other People knew any thing of the Matter.
 Caus. Denew. But was there any thing said in case he should refuse to sign the Name?

Chief Lord. No.

The Paper shown to Mr. Colpeper.

Caus. Denew. Is that the Paper?

Mr. Colpeper. I am almost sure it is not.

L. C. J. What do you say?

Mr. Colpeper. Indeed, my Lord, I believe it is not.

Caus. Denew. (Speaking to Chief Lord.) Can you say it is the same Paper?

Chief Lord. I cannot say it is the same Paper.

Caus. Denew. But is that a Copy of the Paper that was drawn up?

Chief Lord. I do believe it is the same Paper.

Caus. Denew. But he was not at the Delivery of the Paper to Mr. Colpeper; therefore it is not Evidence.

Serj. Darrell. My Lord, it cannot be read, for so read it is to make it Evidence: And it does not appear by any Proof that it is the Paper, but on the contrary is sworn by Mr. Colpeper not to be the Paper.

L. C. J. (Speaking to Mr. Colpeper.) Can you say it is not the Paper?

Mr. Colpeper. My Lord, to the best of my Judgment it is not the Paper, nor the Signify of it; and there is this Clause left out, That I was to signify Sir George Raol, and all his Friends.

L. C. J. Was that in the Paper you had?

Mr. Colpeper. My Lord, in the Paper I had, I was to ask Pardon of Sir George Raol and all his Friends, though I had never spoke amiss of him.

Caus. Denew. My Lord, he does not believe it to be the same Paper.

Mr. Colpeper. I do not believe it to be the same.

L. C. J. It cannot be read as Evidence.

Caus. Denew. We do not offer it, my Lord, as the Paper that was actually drawn, but that the Jury may see that Mr. Bristow went upon an amiable Design; we offer it so far.

Caus. Denew. Do you, Mr. Colpeper, say it was the same Paper?

Mr. Colpeper. That which was tendered to me was most ignominious.

The Lord Winchester was read.

Caus. Denew. Pray, my Lord, will you be pleased to give an Account of what you know of this Gentlemen.

Lord Winchester. When I understood there were under such an extraordinary Prosecution, I could do as I thought right to appear for them here: I wonder that their Gentlemen, that are known to be Gentlemen of good Estates and great Honour, should be called Fence-Masters and Duellists. I'll speak first of all to Mr. Bristow, who is a Gentleman that is Esteemed and Worth in Town and Country, that I need say but a very few

Words of him; I have long had an intimate Acquaintance with him; there is nothing can be less improper to any Man than he: He is one that values himself upon his Honour and Reputation, and would not do a base Thing for the World. And Mr. Denew is represented as a Fence-Master and Duellist, a Master of Deceit; it is well known he is a Gentleman of good Repute.

L. C. J. He is offered to be one that is silent in Fencing.

Lord Winchester. He has a Commission from the Queen, and hath a double Commission from the Prince at this Time, and is now in a good Circumstances in many Man in the Country, and is well known to be of a good Family; and I am sure he would be very sorry to change (if) Circumstances with this Gentleman that makes Complaint against him; I never knew him give Offence to any Man.

Caus. Denew. Was he a quarrelsome Man?

Lord Winchester. He is a Man of Honour, and will endeavour, when he is injured by any Man, to do himself Right: He hath a great Regard to his Reputation.

The Earl of Thanet sworn.

E. of Thanet. I have known Mr. Bristow for near these twenty Years past, and I never heard but that he acquired himself, as all the Business he transacted, like a very worthy, honest Gentleman, and an understanding Man; and thus is the just Character he hath in the World; and thus did recommend him to the Station he is now in to serve the Queen: He hath been a very civil, honest Man, and I never heard but he was steady and willing to do all kind of good Offices. As to the other Gentlemen, I believe Mr. Denew to be an honest Gentleman; but as to Mr. Bristow, I never heard his Name before.

Caus. Denew. Do you think, my Lord, they would be guilty of an Affliction?

Lord Winchester. Yes, indeed.

Caus. Denew. Is Mr. Bristow in any Place in the Government?

E. of Thanet. He has had a Place in Dover these twenty or thirty Years; and I believe, by the just and good Character he hath had, is made One of the Commissioners of the Customs-House.

Caus. Denew. Are they taken Notice of to be Men of peaceable Temper?

E. of Thanet. I believe Mr. Bristow, by all that I know of him, that there is not another Man in England can believe he would have any Intimation of being in an Affliction.

Lord Winchester. As to Mr. Bristow, hearing his Name, I should have said something of him. He is now actually employed under the Prince and me; and I verily believe he cannot be concerned in a base Affliction.

Sir Benjamin Bathurst sworn.

Bathurst. I have known Mr. Bristow, my Lord, these twenty-seven or twenty-eight Years: I never knew a Man in my Life more moderate, or more diligent to do any good Office; a Man of a very good Temper; ever inclined to quarrel, never provoked; but is always ready to do all the good Offices he can. Mr. Denew, I hear, hath been slightly spoken of, which I wonder at. He was bred a Merchant, has always behaved himself very well, and is a Gentleman of a good Family and plentiful Estate, and hath lived in great Reputation, and did sometimes trade as a Merchant, and, that notwithstanding, he lives now upon his Estate in the Country. As far as I have heard of Mr. Bristow, he hath a good Character of all Mankind, and is now One of the Commissioners of the Customs-House, and I believe is very well esteemed by all that know him.

Caus. Denew. Do you think he would have been guilty of an Affliction?

Bathurst. Indeed, I do not.

L. C. J. (Speaking to the Queen's Counsel.) I would ask you how you fit any Cause upon Mr. Bristow? I will suppose the Words in the Paper which he showed Mr. Colpeper were not proven, and not fit for a Man to sign. But does that make him Guilty?

Caus. Denew. My Lord, he challenged him in express Terms.

Serj. Darrell. My Lord, Mr. Colpeper says, Mr. Bristow came to him, and proposed the signing of a Paper, and that now they shall bring another Paper, and not the same that was first tendered to him, I think is very extraordinary, and makes against them: But then, my Lord, after the Paper was tendered to Mr. Colpeper, (but refused by him) immediately after that Mr. Bristow gave the Challenge.

L. C. J. That is a Question.

Caus. Denew. Says he, Sir George Raol is the Flower of Kent, does friendly Offices, promotes and advances his Friends, and there are twenty will engage themselves in his Quarrel, and I myself for one.

L. C. J. Mr. Colpeper, Pray tell us the Matter.

Colpeper. Says he, I for you have a Friend here, and I have one hard by; Come out, and end it.

L. C. J. I have a Friend by—But this is not an Assault.

Colpeper. Says he, I will take the Quarrel upon myself, and I will stand and fall by Sir George Raol.

Caus. Denew. Did you hear him say so—Colpeper. Yes, my Lord.

L. C. J. Did he say the same?—Colpeper. Yes, my Lord.

L. C. J. Mr. Denew. Did you hear him say that he had a Friend below, and therefore he would have him go down and end it; and, that he would take the Quarrel upon himself?

Mr. Denew. He said he would make an End of it presently; that he would stand and fall by Sir George Raol, and to would twenty more; and that if he did not sign, he would be infamed; that there were twenty engaged to the Quarrel.

L. C. J. But did he say, Come out, and end it now; I have a Friend hard by?

Mr. Denew. I did not hear him say, Come out; but I heard him say, There were twenty more would stand and fall with Sir George Raol.

Serj. Darrell. Did you hear him say any thing of coming out?

Mr. Denew. He did, we will end it presently.

L. C. J. Did he say, Come out?

(a) Mr. Colpeper is glad of the different Characters, and hopes the Reader will think it well made out.

(b) Whether this is any Cut to the Paper?

(c) The Gentlemen his Lordship might be misinformed, are the Defendants indicted for Perjury.

My Lord, said Mr. William Colquhoun, going on, I am the most injured Gentleman of my Country. The Matter of my Dispute is true. Perhaps the Matter may be more excusable, than justifiable: Mr. Dundas from a Captain, is made a Lieutenant-Colonel, and Mr. Ansell has a Place of School for Annulls, both since that Crime. 'Tis no wonder if the extreme Sense of my Wrong should excite from me Expectations which your Lordship thinks do not become me. As your Lordship has apprehended me, I doubt not but you will also give just Judgment on the Affidavits.

The Council for the Defendants then apprehending a great Fine, put Mr. William Colquhoun in mind, that he had said at the Trial, Mr. Dundas had but a small Estate.

Mr. William Colquhoun own'd he had said so, and refer'd the Fine to the Pleasure of the Court.

Accordingly Sentence was pass'd upon the Defendants as follows:

Nathaniel Dennis Fin'd 200 Marks.

Richard Brinsley, 100 Pounds.

LIV. The Proceedings before the LORDS of the Council in Scotland, against David Baillie, in Feb. 1703-4, for Defaming the Duke of Queensbury, and the Marquis of Anandale.

THERE having been several Letters stopp'd at the Post-Office in Edinburgh, written in Cypher, &c. which gave Alarm to the Masters of a Plot invented, the Government caus'd David Baillie to be seized, who being brought before the Privy Council, the Lord Justice-Clerk ask'd him, *if he was the Person he offer'd to enter him in dispute against the Duke of Hamilton, the Duke of Argyll, and his Brother the Earl of Glencairn, and also, as it had been in a Plot against Mr. M'gilly.* To this Question Baillie had by him ready: *That the Duke of Queensbury, and Marquis of Anandale, had been meeting with him, as agents against the Person the Lord Justice-Clerk had nam'd.*

The Lord Justice-Clerk to examine Baillie, Heed, and when, and upon what Occasion he had met with the Duke of Queensbury, and the Marquis of Anandale? All the Answer they could get of him, was, *That he had writ a Letter to the Duke of Hamilton, which contain'd all that he was, as I said, of what he had writ to him. He was told in Council, That he must declare what he had writ in that Letter; it not being enough for him, in a Case of that Nature, to rely to it in general Terms. And in the mean time, left that it might be impossible, Informations, or Advice given from by the Party, which was there Intereft to do, he was committed chief Professor, which in the usual Course the Privy-Council takes, all the Examinations are over. But at the same time he was allow'd Pen, Ink, and Paper, and he said he was in Writing all that he had to say, of what he propos'd to have pass'd between the Duke of Queensbury, the Marquis of Anandale, and him.*

Instead of drawing up what he had to say in Writing, as desired by the Privy-Council, he writ a Letter to the Earl of Selkirk, President of the Council, acquainting him, That upon the whole Matter, he could say no more than what he had writ in that Letter, (meaning his to the Duke of Hamilton), and pricks that the Lord Justice-Clerk might show the same to the Privy-Council.

In the mean time, the Lords of the Privy-Council sent two of their Members to the Duke of Hamilton for the Letter Baillie had writ to him, which his Grace deliver'd to them, upon the Clerk of the Council returning him an attested Copy. Thereupon Baillie was again call'd before the Privy-Council, and ask'd, That since he had said in general, that the Duke of Queensbury, and the Marquis of Anandale, had endeavour'd to bribe him to dispute against certain Noble Persons, it was expected now, he should give the Board all the Particulars of that I understand. Baillie still insist'd, That he could make no Answer, except he had a sight of his Letter to the Duke of Hamilton. The Queen's Advocate told him in Council, That by the Law he was oblig'd to answer such Questions as were put to him by the Board, and that if the Letter he had writ to the Duke of Hamilton were true, he could not but remember the material Heads thereof, and if it were false, he ought not to continue in a Lye. The Queen's Advocate put him also in Mind, how unaccountable a Thing it was, That he should not remember what he had writ but five Weeks before, which was the Date of his Letter to the Duke of Hamilton, when at that very Letter, he propos'd to remember a great many Things which had happen'd to him Five Months before, which was the Time he had met with the Duke of Queensbury. The Advocate insist'd further, That his Shuffling in this Matter, caus'd with it, all along, a great Probability, that the Letter he had writ to the Duke of Hamilton had been falsified, or suggest'd to him; and he had first quite forgot his Lesson; whereas, if what he writ to him had been true, (being a Thing in itself so extraordinary,) through he might possibly forget some remote Circumstances, it was impossible he could forget, in so short a Time, the Bulk and material Parts of it. To this being unanswer'd, and him, for the most Part, defending and countering themselves.

Baillie continu'd deaf to all that the Lords of the Council could say to him, and they, to give a fair Handle to recollect his Memory, agreed to draw up some Interrogatories in Writing, which they deliver'd to him, desiring him to give in his Answers likewise in Writing, against the next Time he should be call'd before them.

Accordingly Baillie, when remanded back to Prison, falls to writing something like Answers to the Interrogatories which had been given him. But, upon second Thoughts, he breaks off abruptly, and to cover his Confusion and Intimidation, throws the Ink-Bottle upon the Papers, at Design to blot out what he had writ: Which Paper the Keeper of the Prison brought to the Council.

The Council seeing they could have nothing from him in Writing, after several Days Time given him to do so, call'd for him again, and desired him to answer the Interrogatories *Pro Per*: And what Answers they were, will best appear, by placing the interrogatories and the Answers in Order.

Baillie's Interrogatories and Answers.

1. *Interrogatory 1st. What was the Rise, or Occasion of his being sent for by, or going to the Duke of Queensbury, and Marquis of Anandale, about the Plot? And, if it was any Discourse he had had with any of their*

Servants or Dependents; or that either he inform'd them, or they discus'd him on that Subject?

Answer. He can give no Answer thereto at all.

2. *Inter. 2^d. Who brought him to the Duke of Queensbury? And what was said to him by the Person who desired him to enter to his Grace? And what he answer'd? And about what Time this happen'd, as near as he can remember?*

Ans. The Time was about the latter End of July, or the Beginning of August, and does not remember what Mr. Stewart, Servant to the Duke, who brought him to the Duke, said to him; and the Declarant answer'd, Nothing; but went away with him.

3. *Inter. 3^d. What the Duke of Queensbury said to him? What Account he gave of the Reason or Cause why he sent for him; or that any Person had recommended him? And who the Person was? And that he give Account of any other Circumstances, that might have been the Cause or Occasion of the Duke's Enquiry?*

Ans. Does not remember what the Duke of Queensbury said to him; nor can he answer at present, what was the Reason the Duke gave for sending for him. *And says,* That the Duke said, he was recommended to him; but would not tell the Declarant, by whom.

4. *Inter. 4th. What the Duke said to him? What he inform'd him of either as to Things, or Persons? And what he defin'd of him? And for what Cause? And what Arguments he us'd, to induce him to be free and plain?*

Ans. He cannot recollect himself of what the Duke inform'd him, as to any other Person, and will not answer, at present, what the Duke defin'd of him: Nor will he answer, what Arguments the Duke us'd with him, to be free and plain with his Grace.

5. *Inter. 5th. If the Duke nam'd to him any Persons? And what the Persons were? And what the Duke desired to know of him concerning them? And what he answer'd about the said Persons, or any thing that was discus'd to him?*

Ans. Yes: And what their Persons were, will not answer at present. What did the Duke desire of him concerning their Persons? He is not to answer that at this Time: What Answer he gave to the Duke, when he desired to know any thing of their Persons, &c. Will not answer that either.

6. *Inter. 6th. If the Duke, at parting, appointed him a new Time, or said he would send again for him? And to what Purpose? And, if he did him require, at remember himself better, as to any Particular, and bring him an Account of it?*

Ans. If the Duke, at parting, appointed a new Meeting with him? Says No: But said he would send for him again. If the Duke did bid him to remember, or enquire, as to any Particular, and bring him an Account of it? He cannot answer that just now.

7. *Inter. 7th. When he met with the Duke the second Time? And what was the Occasion of it? And what further Discourse was betwixt them? And if any Persons were then nam'd? Or he defin'd to witness against them, or to witness any Part of the Plot, or then Hand therein, or any Correspondence thereabouts? And what else pass'd in the Second Meeting?*

Ans. At what Time he met with the Duke the Second Time, he cannot remember: And that was the Occasion of his Meeting with the Duke the Second Time, he cannot answer. As to that, What Discourse was betwixt them the Second Time, he cannot recollect any Particular that pass'd betwixt them just now. And if he us'd any Persons to him? Declares, Yes: And what their Persons were? He will not answer that. And if he defin'd him to witness against any Person? He will not answer that just now.

8. *Inter. 8th. How long after was the Third, and then the Fourth Meetings? And if any thing occur'd in the mean time? And what was the Occasion of the said Meetings? And what pass'd therein, either as to Persons or Things?*

Ans. When was the Third or Fourth Meeting he had with the Duke? He did not mind: And what occasion'd the Third or Fourth Meeting with the Duke? He will not tell that at this Time: And what pass'd betwixt them at the Third or Fourth Meeting, either as to Persons, or Things? He is not to answer at this Time.

9. *Inter. 9th. That you answer all the above Questions: As to the Occasion and Manner of your coming to the Marquis of Anandale? And what he said to, and demand'd of you? And what you answer'd? And what Persons he nam'd to you? And what he requir'd of you as to those Persons? And what Encouragement he promised you? And for what Cause?*

Ans. Who brought him to the Marquis of Anandale? Answer'd, A Gentleman, whose Name is *hous*, as he believes: And what the Marquis said, or ask'd of him? He will not answer at this Time: And what Persons the Marquis nam'd to him? Answers, He is not to name them now. And what he did require of you, as to these Persons?

* These, and the other Letters, are all inserted together at the Close of this Proceeding.

Answers

"I believe, and that is a Quality makes any Person capable both to manage and conceal his Designs: And I so assure you, Madam, said he to me, I do think there is no Person fit to carry on a close Design, as Mr. Baillie; for though I know there has been nothing done these ten Years or more, since the other Side, but what has been acknowledged, or proved to; yet I could never, notwithstanding of my Religion and Intimacy with him, discover whether he was so engaged or not, but that I knew it perfectly well from another that is concerned, that I hope to see in a Week or two, then I shall know the meaning of these Letters. Soon after that, may it please your Grace, I went to call for Mr. Baillie, where, near his Door, upon the Stairs, I met, or rather found standing, a Black, who I have since in a red Coat, laced, and he was then in a dark Gown. I went to the Door, knocked, and he went in and engaged for Mr. Baillie, the Maid told me, he was not within; then, said he, I will go into his Chamber, and sit down, and cool myself, and he was going, but the Maid stopped me, and prayed me to walk in to her Mistress, who told me, I must excuse the Maid; for to tell me the Truth, Mr. Baillie was within, and a Gentleman that I met; but had given Orders to say he was out, because he was to be busy, so I proved me to sit down there a little, which I did; and after some Time, what I had heard, which was a great deal more than what was said to say here, because it mentioned the Person, who I fancy the Black I saw upon the Stairs, belongs to, gave me the Curiosity to ask, if they knew who was with Mr. Baillie. They said, No. Dear me, I wish I have forgotten was I told you when I met the Black upon the Stairs. What does he belong to the Gentleman that it was Mr. Baillie? I do not know, said the Maid, but I see a Black came in to Mr. Baillie this Afternoon; and it is very like he came to see if he was within; for I heard Mr. Baillie say, as he went out, Give my Service, and I will wait myself until he comes; and to be walked up and down the Entry for above half an Hour, and then the Gentleman that is still with him, knocked, and Mr. Baillie let him in himself; and as soon as he had earned him in, he came out and said, I am not within to any Body; this is all I know, said he: So I was obliged to go home without feeling of him. But I could not be at Ease till I see him, and so I found him this Morning sitting, but I know not what yet it served to increase my Suspicion, for after he had done writing, he put what he had wrote into a Play-Book, and rolled it up hard, and tied it with a Pack-thread, and sealed it; and so left then half an Hour, which was ten o'clock, there came a Maid who I have seen since in a red Livery Laced, with Good Morrow, Sir, I come for Gravel, if you think fit to send him. No, answered Mr. Baillie, I cannot spare him: But there is a Play will do as well; and they may either keep it, return, or burn it as they please; so away went the Maid, who was in black; and I said, What Mass is this? But Mr. Baillie waved answering, and talked of the Weather, and indifferent Things, so I had no other Way left to satisfy my Curiosity but to call out, Nay, now I believe all I heard Yesterday of you, Mr. Baillie: Pray, what was that, said he? Why, that you are a Plottist; and so I told him all, and what Suspicion he being that way with him I fancied the Black belonged to; and his sending away Writings under the Cover of this Play. He only smiled, and said, I think it is certain, that he will Nobody that knows me, believe me a Plottist; for I have not a Head for that, and I know nothing of any Letters at all, nor of any Body that would write to me, that need to do it secretly: But if they did, I should not trouble any Body to explain them; neither, if I were capable, should I give myself the Pain to unlock any other Persons Letters: So I do not see how it concerns me at all; for that Gentleman's Weakness that is pleased to give me such a good Character, as he believed, I pray him for it if he designs it kindly; if otherwise, I dispute the Impertinence of it, as being altogether groundless, as your Suspicion is, Madam, said he: And no doubt, wherever is contained in those Letters, is very well known before this Time; for I believe it is only a Trick to amuse the People with an Apprehension of a Popish Successor, that they may, with the more Ease, bring about the Design of turning *Hann* declared here, as in *England*. And thus, I suppose, is Mr. Baillie's Plot, and his Father-in-Law, the Queen's Advocate, and the rest of our Courtiers, excepting his Grace the Commissioner. Nay, at that word, said I, you except him. Yes, Madam, said he, I except him, not because he is Commissioner, but because he is the Devil, if not the only good Man amongst them. For though I am no Courtier, I go sometimes to see them; but the Dutchess looks always to find at me, I believe I shall go no more. At that time I observed her Grace looking so to me, I thought it might be because of my Climate, or my Stockings, being sometimes Pink-coloured, or blue, which are too youthful for me; but she I find is not the Thing: For the last Time I was there, her Grace still looked, though I think there was nothing remarkable, or very monstrous about me. But I am apt to imagine his Grace, the Commissioner, knows me again; which I wonder, considering he never sees me but once, and that was at Night, and I was in my own Hair; and so I had feared me to the Dutchess; and she wonders I come there. Why, said I, should I wonder at that? Nay, that I cannot tell, said he, except he, that formerly has done me the Honour to be the Duke of *Sydney*'s know, or at least believe, I could do him some Manner of Service last Winter while I was at *London*. And his Grace was pleased to send me by Mr. *Stewart*. But that I imagined what it was, yet I feared ignorant, because I could not have done what would have been of Service to his Grace, without injuring others; though for what I know, I might as well have done it as not. Nay, said I, if it be so, why do you not do it? No; that Time, says he, is past. Not but that I know that it would be of more Service to his Grace than that would have been, or any Thing else that can happen to him. Pray, for God's sake, tell me what that is, said I. No, says he, I dare not, but I have a Care of that: It is not for you, or any Woman to know that, without it were the Queen; nor any Man except it were the Queen's Commissioner. And if he knew

his Enemies, I think, would have a great deal to say at that. Madam, we have had enough of this; say, and it shall be done, I shall sometime longer; then bid adieu; and was so gone. I then, but I undertook to give your Grace this Trouble, which I have done with all the Exactness my Memory would serve me, and which I thought myself obliged from two powerful Reasons: First, I have the Honour to be of your Grace's Country; and the next, I have received many extraordinary Civilities from your Grace's most noble and unresolvable Brother, my Lord of *Bedford*. And therefore, if your Grace thinks fit to take Notice of this, I hope you will order it so, that Mr. Baillie may not suffer me for having given your Grace so much Intelligence, for that might prove of very ill Consequence to me, being a stranger, if your Grace should intimate this to any Person but the Commissioner, who, no doubt, will certainly find it return to account, to give Mr. Baillie. He lodges at Mrs. *Arden*'s, in Kensington's Church, near the Treasury.

"May it please your Grace,

"I am your Grace's, &c."

About the 11th of October, the Day before the Marquis of *Arundell*, left *London*, to attend her Majesty upon a special Call, there was a Letter directed to him, from the same Hand with that to the Dutchess of *Sydney*, signed *Charlotte* Gaylard, in the following Words, viz.

LETTER to the Marquis of *Arundell*.

My Lord,

"THE Desire I have to serve your Lordship, puts me upon giving you your Lordship this Trouble, which is, in my Words, to let you know, my Lord, I had one Mr. Baillie has in his Power to do an extraordinary Piece of Service, to the Advantage of the QUEEN's Affairs, and your Lordship's Interest, which is to inform me: Therefore do not fight the Advance of her that loves you, and wishes your Prosperity and Glory, but send for Mr. Baillie, who is truly, to do him Justice, a Person of great Modesty and clear Sense, and generous to be yours. And though I shall not be able to do this Time, my Lord, yet I will tell you that he is able to do what you will put the Queen's Honours and your own upon your Power, and for ever desire the Dutchess. I think I need say no more, the Queen's Service and your own Interest will sufficient Persuasions to Discretion and Care, only I am to beg of you, my Lord, not to say any Thing of this Letter, unless that I have given your Lordship, in any Person; for I suppose you need not want a Presence to find Mr. Baillie in your coming to speak to you; and I have as little Reason to doubt but your Lordship, if he comes to you, will take all the kind and friendly Ways to gain the Point. To make which the more easy, you may tell him, You know very well that at this very Time, there is Designs carrying on both in *England* and *France*, as well as in *Scotland*. And though you do not know all the Particulars, and Persons concerned, yet you know that he does; and that is not all, for your Lordship may intimate that you know that my Lord *Dumfries*, the Night before he went out of *Town*, came to Mr. Baillie's Chamber about ten o'clock at Night, and that till Eleven; at which Hour came a certain Duke, and a little after another Titular or pretended Duke in Women's Cloaths, and several others, to the Number of eleven Persons; and that till about four o'clock in the Morning. This I think is sufficient to your Lordship, for you must manage all with Secrecy and Caution, and give no Alarm by Unkindness or Violence. Now, my Lord, I am to tell you your Lordship, Mr. Baillie's last, the very first Clue about the Sign at the door, on the South-side of the Way, at one Mr. *Adam*. I am, my Lord, your Lordship's unknown, but most sincere and hearty Well-wisher, and most humble servant,

"CHARLOTTE COMSTABLE."

The Letter directed thus: To the Right Honourable the Marquis of *Arundell*, Lord Professor of Her Majesty's Privy Council. And in a Cover directed to Mr. *Croft*, at the Marquis of *Arundell*'s. And wrote within, Sir deliver the enclosed immediately to my Lord.

Upon the 21st of December, Baillie, after he had been at the Lord *Bathurst*'s, came to the Duke of *Hamilton*'s Lodgings, where he delivered a signed Declaration, by Way of Letter to his Grace, in the following Words:

Edinburgh, Decemb. 21st, 1793.

May it please your Grace,

"THE Noise that is every where of a Plot, makes me think it my Duty to inform your Grace what happened to me during the last Session of Parliament, which, in a few Words, was this, The Duke of *Sydney*, then Commissioner, sent for me, (but by whose Intimation I was never able to learn) and after a great Proclamation of Kindness, and Declarations of Readiness to do me Service, his Grace did allege, That he had in from very good Hands, that there were Designs carrying on in *Scotland*, *England*, and *Ireland*, to subvert the present Government, and to restore the Prince of *Wales*; and as he alleged, I was an ignorant of them; so that he hoped and expected me for his Side, as well as my own, and above all, for his Preservation of His Majesty's Person and Government, so far as he knew the whole Matter. To which Demands, I was obliged to answer, though not without Surprize, and extreme confusion. Yet Truly, when I hope I had never given me, obliged me to declare my own Innocence, and my Ignorance of all such wicked Schemes.

D 4

"*When the Duke of Anjou's Bill inflicting, I was oblig'd to offer to*
at what I was going, he call'd me back from the Door,
confessing his Kindness to me, for he had us'd me not only as
a Servant, but his personal Friendship, and desired me to
what I did, for he would not leave me in, which indeed I
found I - my small Mortification, for a few Days after, he sent Mr.
Stewart, the same Gentleman that he had employ'd to bring me to him
before I and Mr. Stewart having left the Room, the Duke went to his
Cabinet, and as he was opening it, told me, He would show me a Ra-
by, but having search'd some of the Drawers of his Cabinet,
he seem'd as if he had been surpris'd, and said, he believ'd he had left what
he look'd for with his Wife, and had forgot to go to her to the Door,
coll'd, came back again, and sat down, and would needs, whether it was
Reason or not, force me to do the like: And then he told me, He had
a mind to show me three Letters, that were carry'd by the Duke of
the Duchess to a Person, that it seem'd was of the same Name;
that on doubt they contain'd Matters of dangerous Consequence against
the Government. Just as he had said that, Mr. Bruce, that is his Fa-
let de Chene, &c. came and whisper'd him, and when he was gone, the
Duke told me, That the Duchess had let the President of the Sessions
carry away the Letters, but however, said he, I know very well you
know what is in them, and more so. Which when I replied, it was im-
possible, having never seen them: He smil'd, and said, I will warrant you do
not know nothing of my Lord Number Three, or Seven, nor Phosphorus.
Not indeed, my Lord, I answer'd, I know nothing of what your Grace
means. Then you do not know Duke Hamilton, my Lord of Abol,
nor the Chancellor, nor never so much, at head of my Lord Duke of
most, Redoubt, nor my Lord Tark, nor Blaster. Well, well,
said he, Mr. Baulie, you will say nothing to me, but you for I am not
to ignorant as you take me to be, for I know very well who are Pen-
sioners to France, and who are not; Nay, I know my Lord of Abol,
and your Convert, the Chancellor, is amongst the first of them now,
tho' may be they have not been so long as your great Duke of Hamilton,
Marshall, and Ambassadors, for I know the Duke of Hamilton has been
in these many Years. But when I again, and again aliter'd the Truth,
That I knew nothing of all that, and that at your Grace, and all the
rest of the Noblemen named, were as ignorant, and as innocent as I,
certainly they were unnecessary to his Grace, for they were generally
believed to be the best Men of the Nation: At which he cry'd out
mightily, and said a great many words Things that had been done by
your Grace, as he proceeded: But I will not now trouble your Grace
with a Relation of them at this Time, deigning, if it please God I live,
to publish the whole Conference at large, both to satisfy my Conscience,
and Country, or the Duke of Anjou's Practices to gain me to
make the most hard of all Lyes, and the most dangerous, for he of-
fer'd me great Promises, and Money, even what I pleas'd, if I would
but, as he term'd it, tell the Queen what he would tell me; for it
seem'd, I would force him to be plain with me, because I would not un-
derstand. But if I would go to the Queen, and tell her Majesty, That
Duke Hamilton, Abol, the Chancellor, and the other named Lyes, are
actually Pensioners to France, and that they had a Publick Bond and
Assign'd for buying up Arms, and other Stores of War, then he would
not only promise, but perform. And if I could undertake this, then he
would immediately let me see a List of all these he would have brought
into the Plot, and he would swear never to let any Person know but
that it was a real Plot: And that I had made the Discovery first to him;
and that he had sent me to the Queen: I say, provided I would say af-
ter him, and swear to it. Your Grace may imagine, I was not a little
put to it for an Answer, and as I remember, it was this: That I
thought his Grace's Advice were certainly the best, where there was
a real Plot: But for a Person to make a Lye to me, and to expect
from that upon altogether innocent, for as I knew, it was what I
hope that I shall never think of but with Trembling and Detesta-
tion. But if any thing occurred to me, the Discovery of which might be
a Service to the Queen, or my Country, none would be readier than
myself. Th's, as may it please your Grace, I thought fit to advertise you
of, being a short Abridgement of what pass'd 'twixt the Duke of An-
jou and me. But it seems to me, he having failed in his Attempt on
my Integrity, employ'd the Marquis of Anandale on the same Design;
who did, to do him Justice, use no other another manner. For having
got me into his Clutches, if I may speak for for he sent for me the
very Day before he went to London, and would not part with me, he
said, till I went to London with him, to tell the Queen how well
he was serv'd by Duke Duke of Abol, who, he knew, had been at the
Chambers with your Grace in Women's Cloaths, and that there came
thence, all that I named before, and my Lord Drummond, and Fenwick,
and several others, to the Number of Eighteen: And that there they
us'd of bringing home the Prince of Wales, and all that was necessary
for such an Enterprize. To which, when I answer'd, there was never
any such Meeting, he said, we should understand one another better
when we got into English Ground: For he thought it was unnecessary to
tell me, That I must not only say there was such a Meeting, but swear
it, which if I did, it would leave it in my Power to make myself for ever,
and might be an Officer of State before I left London again. But when
I reply'd, that I was not fond of leaving a Lye, and that it was impos-
sible for me, to bring myself to think of such a thing, and that I would
not, that I had never us'd an Inclination to go to London, so go on that
Score, there follow I hop'd he would excuse me. But he was so far from
that, he drew in a Pistol, and (swore he would be revenged. And when
he fix'd that did not prevail neither, he fell a coaxing me again; but
I think God, he did not succeed that Way neither. Yet I told him at
parting, I was his humble servant; and when I really would have been,
so far as never to have had upon this most abominable Villainy, tho'
fare nothing could be more provok'd in, than to be sent for by People
I had never had Convers'd with, nor Obligation to, nor Dependence upon:
And there to be flatter'd with great Rewards, if I would become a

"*Villain, the most perjured of all Men; but threaten'd to De-*
stroy him, if I refus'd my Integrity and Loyalty. For finally,
by the sort of these presents what they will, nothing can be more
absurd, than thus to abuse the best of Queens, and to endanger
the best of Subjects, and indeed the only good Part of the Nation: And
who, if there were any way to be attempt'd, would certainly stand by
the Queen, and Country, when such Men as the Duke of Anjou,
and Marquis of Anandale, would desert both. May it please your
Grace, I was saying before, I would never say any thing of this, had
not the Noise of a Plot met me everywhere, and I could find no longer
Patience. And I never think of my Silence, but you easily to do with
Apprehensions of the Danger, that the Duke of Abol, and a great many
other Persons are fallen into; which perhaps I might have in some mea-
sure prevented, if I had sooner given your Grace the Truth of this, so
you might have warn'd the Duke of the Danger of his Enmity, which
I hope you will do now without further Delay. May it please your
Grace, I am Your Grace's most humble Servant as all Sincerity and
Truth.

"*Be Subscribers,*

"*DAVID BAILLIE."*

The LETTER is the Earl of Eglinton, Prefect of the Council, pro Tempore.

My Lord,

"*FROM what my Lord Justice Clerk said, I find that I owe my pe-*
dest Misfortune to him; and that it was his Lordship that procur'd
my Confinement, upon the Information given him, by whom I know
not: But he may please to know, that I give no Information to any
Person, in relation to the Business that happened to me, from his
Grace the Duke of Anjou, or my Lord Marquis of Anandale, con-
ditionally. For I left it to them, whom I inform'd, to make what Use
they pleas'd of my Information. So consequently my Lord Jus-
ice Clerk may, without the least Scruple, produce his Informer, and He
my Information, which was not Verbal, but in Writing. Therefore,
my Lord, if you please, this is what I think most honorable for me;
because, as I understand my Lord Justice Clerk, it was three Weeks
since he had notice of this Business, but that he delay'd apprehending
me, because the Person that spoke of me to him, did not think it fit to
attempt it, till there was a Warrant to seize me, because I was a Gen-
tleman. Now, my Lord, I think what he pleas'd to add, would
not have given me the Assurance, to have said that I did so myself,
for it is a very glorious One, and it shall be one of the chief Studies
of my Life to maintain it. And therefore, my Lord, without Pre-
judice, or Disobedience, or Obligation, to either the Duke of Anjou,
or the Marquis of Anandale, or my Lord Justice Clerk, I do plainly say,
that whatever Information I gave on this Affair, was in Writing, and
without either Caution or Secrecy for my own Safety: which, I think,
will by my own Innocence be best secur'd to me, not but that I hope all
Justice from the Board, where my Lord Eglinton sits, and who most
certainly beg, that your Lordship will be pleas'd to define my Lord
Justice Clerk to show the Information I have already given; which, I
think, will abundantly show how little I regard the Esteem of my Persons,
when I come in Competition with that of my Conscience, for I will
always speak Truth, through the Assistance of God, whatever be the
Consequence. Now, my Lord, I am really to ill, that I am scarce able
to say any thing of what the Earl of Glasgow seems to lay some Stress
upon; my not owning ready enough, (as he thinks) the Signification
of every Word in Mr. Stiel's Letter: I will only say this, That Mr.
Stiel and I have convers'd long, and very frequently, and with great
Freedom, but without any other Design than to direct and amuse with
little bits of good Humour: For sometimes Hours to one another would
be all Killers, after our manner, some all Tenderers; some all Scandals,
some all Gallantry; some all Selfishness; some all Devotion; and some all
together, and some all Commendations, and Services, to the Lord knows
who; the acquiescent, and unacquiescent. But I cannot think that
or that Mr. Stiel had nam'd all the People of both Nations that were
at London, when I was there, and desired me to give his Service to them
all, if I like them, that was any thing in this, to oblige me to deny it;
for I think Mr. Stiel may very freely own any thing he ever wrote to me in
his Life, and I am sure will own any Letter I ever wrote to Mr. Stiel.
My Lord, excuse this, I am sensible I have thras'd from your Lordship's
Orator, but the Reason why I did so, was, because my Lord Justice
Clerk did seem to say as much, as if it were to secure his Informer from
the Suspicion of a false Accuser, that I was taken into Custody, seizing
I might either deny, or go out of the Way. As to the saying Truth, I
think no human Estate could induce me to do that. And as for my
going out of the Way, I had no Inclination, for if I had, I am sure I
have had Time and Opportunity enough these five Weeks to have done
that: For upon the very first breaking out of the Plot, at least, so as to
be publick here, I sent a written Account of what had happen'd,
which I am sure is Truth, as to the Matter of Fact which I am to say
from denying, that I define your Lordship may prove my Lord Jus-
ice Clerk to present the Paper to the Council, if you think fit; tho' I do
say it was not to his Lordship that I sent it; yet it is certain it has been
communicated to him; and I desire to have an Opportunity to own
it, as well to free the Person that communicated it to the Justice Clerk
from the Suspicion of a malicious or false Accuser, as to satisfy your
Lordship. To do which, and to obtain my Liberty again I will do
every thing becoming a Christian and a Gentleman, a Prisoner but no
Plaiter. My Lord, I beg leave to say, that I am,

Edinburgh, Tolbooth,
Feb. 4, 1746.

To the Right Honourable
The Earl of Eglinton.

"*My Lord, Your Lordship's most Humble and*
very Obedient Servant.

"*Be Subscribers,*

"*DAVID BAILLIE."*

LV. 73e

LV. The Trial and Condemnation of Capt. John Quelch, and others of his Company, &c. for sundry Piracies, Robberies, and Murder, committed upon the Subjects of the King of Portugal, Her Majesty's Ally, on the Coast of Brasil, &c. at the Court-House in Boston, on the 13th of June, 1704.

At a Court of Admiralty hold at Boston, in Her Majesty's Province of the Massachusetts-Bay in New-England, in America, the 13th Day of June, Anno Dom. 1704.

P R E S E N T,

Joseph Dudley, Esq; Captain-General and Governor in Chief of the Province of the Massachusetts-Bay and New-Hampshire, in New-England, in America, and President of the Council, &c.

Thomas Penny, Esq; Lieutenant-Governor of the Province of the Massachusetts-Bay, &c.

John Obery, Esq; Lieutenant-Governor of the Province of New-Hampshire, &c.

Nathaniel Byfield, Esq; Judge of the Vice-Admiralty, for the Provinces aforesaid.

Samuel Sewall, Esq; First Judge of the Province of the Massachusetts-Bay aforesaid, and One of the Council.

John Adlington, Esq; Secretary, and One of the Council.

John Brewster, Esq; Collector, &c. of Her Majesty's Customs, &c. in New-England.

<i>Elizah Huntington,</i>	} Esqrs.	<i>Elizah Huntington,</i>
<i>John Phillips,</i>		<i>Peter Tensford,</i>
<i>John Felt,</i>		<i>Edward Bransfield,</i>
<i>John Wally,</i>		<i>Samuel Legg,</i>
<i>Joseph Lynde,</i>		<i>Near Waples,</i>
<i>John Thacher,</i>		<i>Samuel Apollon,</i>

Members of His Majesty's Council, in the Province of the Massachusetts-Bay, &c.

The COURT being Set: Proclamation was made for Silence.

AND then the Statute made in the Eleventh and Twelfth Year of the late King WILLIAM, ENTITLED, *An Act for the more effectual Suppression of Piracy*; And also the late King WILLIAM's Commission under the Great Seal, pursuant to the Act aforesaid, constituting the Court, &c. were publicly read.

After which, *John Melville, Gent.* Notary Publick, was sworn Register of the Court by the President: And then the Register administered the Oath prescribed to the President, and then the President administered the Oath to the other Commissioners in open Court, pursuant to the Act aforesaid.

And then the Court was opened by Three Proclamations, as a Court of Admiralty, for Trial of Pirates, &c.

After which was read Her Majesty's Proclamation, signifying Her Royal Pleasure, That all Persons being in Office of Authority, or Government, at the Death of the late King, should to continue till Her Majesty's further Direction: Then was read Two Letters from Her Majesty to his Excellency, in the Trial of Pirates, to govern the same according to the aforesaid Act of Parliament, and Commission thereupon.

A Warning having been given by several of the Commissioners to the Keeper of the Prison, to bring Captain *John Quelch* before them, to answer several Articles of Piracy, Robbery, and Murder, exhibited against him and Company, pursuant to the Governor's Order for the Setting of the Court this Day.

The Court adjourned to Three of the Clock in the Afternoon. When the Court being met, and opened, *Matthew Pinner, John Clifford, and James Powell* (the first of whom had furnished himself previously after his Arrival to his Excellency the Governor), were brought to the Bar, and Arraigned upon several Articles of Piracy, Robbery, and Murder, drawn against Captain *Quelch*, and others his Accomplishers.

On the Tenth following, *Matthias Montano*.

At a Court of Admiralty, hold at Boston, in Her Majesty's Province of the Massachusetts-Bay, in New-England, in America, the Thirtieth Day of June, Anno Dom. 1704. And in the Third Year of the Reign of our Sovereign Lady ANNE, of England, &c. Queen.

ARTICLES of Piracy, Robbery, and Murder, shew and then exhibited against John Quelch, Charles de Boston, as the said President, Maritime, Lieutenant of the Brigantine *Charles*, whereby Daniel Ploverman, Adamus, &c. were late Comers.

You stand here accused of Piracy, Robbery, and Murder.

THAT notwithstanding the said Brigantine was fitted out by several worthy Merchants of *Bydon*, good and loyal Subjects of Her Majesty, (against the French and Spanish Kings, their Vassals, Subjects, and Allies, the declared Enemies of Her most Excellent Majesty Queen ANNE) who obtained a Commission for that Purpose, from His Excellency, *Joseph Dudley, Esq.* Her Majesty's Captain-General, Governor, and Commander in Chief, in and over the said Province, by Force wherof, and in pursuance of the necessary Instructions to your Commissioner, the said Captain Ploverman delivered (whereof you were apprized), He, with his Company, sailed in the said Brigantine from *Bydon*, the Fourth Day of August, 1703, for *Newfoundland*, and *L'Anse-au-Loup*, but falling violently sick, and languishing in his Cabin, you, with divers others, for some Time, bolted the Cabin Door upon him, and he, shortly afterwards, *That it is say*, the sixth Day of the said Month of August, 1704, you neglecting his Orders, and trade of your Owners, to return with the said private Man of War to *Bydon*, would use

for on *Shore* *Matthew Pinner*, and *John Clifford*, Two of your Company, who (declaring your first and intention) secretly desired the same, but here up the *Blind* to Sea, directing your Course for *Paradise Island*, and the Coast of *Brasil*, whither it is open, manifest, you intended Murder, Piracy, and Robberies; which afterwards you perpetrated.

I. For that you, the said *John Quelch*, with divers others, on or about the 18th Day of November, 1703, in the Second Year of Her Majesty's Reign, at or near the Latitude of Seven, South Latitude, on the Coast of *Brasil*, at or near Cape St. Augustine, by Force and Arms, upon the High Sea (within the Jurisdiction of the Admiralty of England), piratically and feloniously did surprise, seize, and take a small Fishing Vessel, (having Portuguese Men on board) and belonging to the Subjects of the King of Portugal, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically did, by Force and Arms, take and carry away a Quantity of Fish and Salt to the Value of Three Pounds.

II. That you, the said *John Quelch*, with divers others, on or about the Eighteenth Day of November, 1703, in the Second Year of Her Majesty's Reign, at or near the Latitude of Eight South, near Cape St. Augustine aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England aforesaid) piratically and feloniously did surprise, seize, and take a small Brigantine, of the Burthen of about Fifty Tons, (having Portuguese Men on board) and belonging to the Subjects of the King of Portugal, (Her Majesty's good Ally) bound for *Paradise* and out of her, then and there, within the aforesaid Jurisdiction, feloniously and piratically did, by Force and Arms, take and carry away Five Chests of *Brasil Sugar*, to the Value of One Hundred and Fifty Pounds, Six Barrels of Molasses, to the Value of Six Pounds.

III. That you, the said *John Quelch*, with divers others, on or about the Twenty-fourth Day of November, 1703, in the Second Year of Her Majesty's Reign, at or near the Latitude of Nine South, near Cape St. Augustine aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England aforesaid) piratically and feloniously did surprise, seize, and take a small Brigantine, of the Burthen of about Forty Tons, (having Portuguese Men on board) and belonging to the Subjects of the King of Portugal, (Her Majesty's good Ally) bound for *Paradise* and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically did, by Force and Arms, take and carry away Five Chests of *Brasil Sugar*, to the Value of One Hundred and Fifty Pounds, a Quantity of Molasses, Rice, and Famine, to the Value of Ten Pounds.

IV. That you, the said *John Quelch*, with divers others, on the Fifth Day of December, 1703, in the Second Year of Her Majesty's Reign, at or near the Latitude of Thirteen South Latitude, off or near *Alora*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England aforesaid) piratically and feloniously did surprise, seize, and take a small Portuguese Ship, navigated by, and belonging to the Subjects of the King of Portugal, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically did, by Force and Arms, take and carry away a Quantity of *Eastern-wares*, Value Five Shillings, Two Jars of *Rum*, Value Ten Shillings, a Quantity of *Linen Cloth*, Value Ten Shillings.

V. That you, the said *John Quelch*, with divers others, on the Fifth Day of December, 1703, in the Second Year of Her Majesty's Reign, at or near the Latitude of Thirteen South, off or near *Alora* aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England aforesaid) piratically and feloniously did surprise, seize, and take a Portuguese Boat, navigated by, and belonging to the Subjects of the King of Portugal, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically did, by Force and Arms, take and carry away four Pieces of Cloth, Value Five Shillings, Two Pieces of Silk, Value Twenty Pounds, and took the said Boat, Value of Thirty Pounds.

VI. That you, the said *John Quelch*, with divers others, on the Ninth Day of December, 1703, in the Second Year of Her Majesty's Reign, at or near the Latitude of Thirteen South, off or near *Alora* aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England aforesaid) piratically and feloniously did surprise, seize, and take a Portuguese Brigantine, Burthen about Twenty Tons, and an open Boat navigated by, and belonging to the Subjects of the King of Portugal, (Her Majesty's good Ally) and out of them, then and there, within the Jurisdiction aforesaid, feloniously and piratically did, by Force and Arms, take about Forty Pounds in Portuguese coined Money, a Negro Boy, Value Twenty Pounds, some Rice and Famine, Value Five Shillings.

VII. That you, the said *John Quelch*, with divers others, on the Twentieth Day of December, 1703, in the Second Year of Her Majesty's Reign, at or near the Latitude of Twenty-three and Forty Minute South, upon the Coast of *Brasil*, near the Island of *Graciosa*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England aforesaid) piratically and feloniously did surprise, seize, and take a small Portuguese Brigantine, Burthen about Twenty-five Tons, navigated by, and belonging unto the Subjects of the King of Portugal, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically did, by Force and Arms, take and carry away Five Chests of *Brasil sugar*, Value One Hundred and Fifty Pounds, and a small Parcel of Portuguese Money, some Gold and silver, Value Fifty Pounds.

VIII. That

VIII. That you, the said *John Quelch*, with divers others, on the Fifthteenth Day of January, 1725, in the Second Year of His Majesty's reign, as we read the *Laws of Twenty four Statute*, upon the Coast of *Brazil*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England) piratically and feloniously did surprise, seize, and take a Portuguese Brigantine, burthen about Thirty-five Tons, the same being *Ship's Tender*, bound for *Rio de Janeiro*, navigated with, and belonging to the Subjects of the King of Portugal, (His Majesty's good Ally) and cut her, then and there, within the Jurisdiction aforesaid, feloniously and piratically, by Force and Arms, did take and carry away One Hundred Weight of Gold Dust, Value Six Thousand Pounds, and Nine Hundred Pieces of silver Gold, Value Nine Hundred Pounds.

IX. That you the said *John Quelch*, with divers others, on the Seventeenth Day of February, 1725, in the Second Year of His Majesty's reign, as we read the *Laws of Twenty-five and Fifty Statute*, near the River in *Piauí*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of England and elsewhere) piratically and feloniously did surprise, seize, and take a Portuguese Ship, burthen about Two Hundred Tons, Twelve Guns, laden with Hides and Tallow, bound to *Beyra*, navigated with, and belonging unto the Subjects of the King of Portugal, (His Majesty's good Ally) and then and there, within the Jurisdiction aforesaid, did feloniously kill and murder the Commander thereof, and wounded several others, and out of her piratically, by Force and Arms, did take and carry away Twelve Bunches, and a Pipe of Beef, Value Ten Pounds; Four great Guns, Value Twenty Pounds; Four Bombs, Value Forty Shillings; Twelve small Arms, Value Six Pounds; One Hundred Weight of Shot, Value Three Pounds; Two Barrels of Powder, Value Twelve Pounds; a new Main-sail, Fore-sail and Fore-top-sail, Value Forty Pounds; a Negro Boy, Value Forty Pounds; and about Two Hundred Pieces of Light, Spanish Money, contrary to the Statute in this Case made and provided.

Upon which Articles, *Matias Mateus*, *Matthew Pinner*, *John Clifford*, and *James Parrot*, being arraigned, severally pleaded Guilty.

Ordered, That *Matthew Pinner*, *John Clifford*, and *James Parrot*, be received unto the Queen's Mercy, and be declared Witnesses in Behalf of the Queen, against *John Quelch* and Company, for their several Piracies, Robberies, and Murders.

Ordered, That *Matthew Pinner*, *John Clifford*, and *James Parrot*, stand within the Bar, and be sworn as Witnesses on Her Majesty's Behalf.

Ordered, That *Captain John Quelch* be brought to the Bar, where being brought, he was arraigned upon the several foregoing Articles of Piracy, &c. to which the said *John Quelch* pleaded, Not Guilty, but moved for Time to prepare for his Trial.

Ordered, That Time be given him 'till Friday Morning next, at Nine o'Clock.

The Prisoner also moved, to know whether he might not have Counsel allowed him, upon any Matter of Law that might happen upon his Trial.

Order, The Articles upon which you are arraigned are plain Matters of Fact; however, that you may have no Reason to complain of Hardship, Mr. *James Matthews*, Attorney at Law, may assist you, and officiate as Matter of Law on your Behalf upon your Trial.

Ordered, That the Prisoner at the Bar have a Copy of the Articles exhibited against him; and then he was remanded to Prison.

Ordered, That a Minute be made, that it is declared by *Pinner*, *Clifford*, and *Parrot*, that *James Quelch*, of *Buenos Aires*, was not of the Company belonging to the Brigantine *Cherish*, which was named in the first Articles for the Voyage.

Ordered, That *John Lambert*, *John Miller*, *William Williams*, *Benjamin Fortin*, *Christopher Saunders*, *James Aylin*, *John Dorely*, *Abraham Richardson*, *Ricard Lawrence*, *John Tompkins*, *John Parsons*, *Abraham Jones*, *Erasmus Perkins*, *John King*, *Francis King*, *Charles Kay*, *Peter Ranch*, *David Carter*, and *John Larner* be brought to the Bar; who being placed at the Bar, were severally arraigned upon the Articles of Piracy, Robbery, and Murder, before-mentioned, *Matias Mateus*: To which they severally pleaded, Not Guilty, and then moved for Counsel, and Time to prepare for their Trial.

Ordered, That Mr. *Matthews* assist the Prisoners in any Matters of Law, and that the Prisoners prepare for their Trial on Friday next, at Nine o'Clock in the Morning: And then the Court adjourn'd 'till Friday Morning.

Friday, 10th Feb.

Proclamation being made, the Court was opened, and *Captain Quelch* being brought to the Bar, presented a Petition in Behalf of himself, and the rest of the Prisoners, praying for further Time.

Ordered, That the Prisoners be allowed Time till Monday Morning next at Nine o'Clock, and then promptly to come upon their Trial: A Motion was also made by the Prisoners Counsel, that the Queen's Witnesses might be kept aside till the Prisoners came upon their Trial; to which it was answered by the Counsel for the Queen, that though in Cases of High Treason, and some other Cases, the Prisoners have been so far favoured, as that upon their Trial, Approvers, or other Evidences for the Crown have been kept out of hearing, of one another while they were giving their several Evidence, yet to separate them before their Trial, was without Precedents, upon which the Court deny'd the Motion of the Prisoners Counsel in that Matter; has directed that at their Examination at the Bar they should be separate. Then the Court adjourn'd 'till Monday Morning, Nine o'Clock.

Monday, the 10th of June, 1724, at Ten o'Clock in the Morning.

The Court being opened, and *Capt. Quelch* to the Bar.

Ordered, That his Issues be taken off during his Trial.

Mr. *Newton*, of Counsel for the Queen. May it please your Excellency, and the Honourable Commissioners of this Court: The Prisoner at the

Bar stands charged, for that he, the said *John Quelch*, late of *Regle*, in the Province of the *Massachusetts Bay*, late *Master*, Lieutenant of the Brigantine *Cherish*, wherof *Donal Parsons*, *Matthews*, deceased, was late Captain, notwithstanding the said Brigantine, &c. With a Article when we have prov'd upon the Prisoner at the Bar, we doubt not but your Excellency, and the rest of the Honourable Commissioners of this Court will do him, our Nation, and the World that Justice, as to condemn and punish him for the same.

Paul Dorely, Esq. Attorney-General, and Mr. *Matthews*'s Advocate for the Court of Admiralty. May it please your Excellency, and the rest of the Honourable Commissioners of this Court: The Prisoner at the Bar, stands charged against you, and charged with several Piracies, Robberies and Murders, committed by himself and Company, upon the High Sea, upon the Subjects of the King of Portugal, Her Majesty's good Ally; the worst and most intolerable of Crimes that can be committed by Men: A Pirate was therefore justly called by the Roman, *Hostis Humani Generis*: And the Civil Law faith of them, that neither Faith nor Oath is to be kept with them; and therefore if a Man that is a Prisoner to Pirates, for the sake of his Liberty promise a Ransom, he is under no Obligation to make good his Promise: for Pirates are not entitled to Law, so in much as the Law of Arms: For which Reason 'tis said, if Pirates be committed upon the Ocean, and the Pirates in the Attempt happen to be overcome, the Captains are not obliged to bring them to any Port, but may expose them immediately to Punishment, by hanging them at the Main-yard: A Sign of its being of a very different and worse Nature than any Crime committed upon the Land; for Robbers and Murderers, and even Traitors themselves, may not be put to Death without passing a formal Trial: And if the Fate of the Prisoner at the Bar, with his Company, had allowed them to have been overcome as their Pleasors, and immediately hung up before the Sun, it had been very just upon them. But being then suffered to live, and now brought unto a Court of Justice, they are to be tried, heard, and tried, as the Laws of England, and our own Country do direct. Hereupon I must observe, that until the Statute of the sixth of Henry the Eighth, all Piracies, Robberies and Murders committed upon the Sea, were Treated before the Admiral, his Lieutenant, or Commandery, after the Course of the Civil Law: the Nature whereof was, that any Judgment of Death could be given against the Offender, either they must plainly confess their Offence (which they will never do without Torture), or else their Offences be so plainly and directly proved by Witnesses indifferent, such as for their Offences committed, which was next to impossible to be had, therefore that Statute enacted, That the said Crimes should be Treated in any County in England, by such and such Commissioners, and the Trial to be according to the Course of the Common Law: This Act continues in England in Force to this Day, and 'till very lately serv'd for all Piracies that were committed in the Plantations, or any Parts beyond the Seas. For *Nath*, the said Pirate that went from this Country, was serv'd upon that Statute, but it proving very troublesome and chargeable to transport Pirates and the Witnesses from the several Plantations, there was another Act of Parliament made in the 12th and 13th Years of the late King William the third, that provides principally and particularly for the Trial of all Pirates that are sent to any of the Plantations. It is by virtue of this Act of Parliament, and a Commission power thereto, that your Excellency, and this Honourable Court, are now sitting in Judgment upon the Prisoner at the Bar, and his vile Accomplices; and though it may be thought by some a pretty severe thing to put an Englishman to Death without a Jury, yet it must be remembered, that the Wisdom and Justice of our Nation, for very sufficient and excellent Reasons, have so ordered it in the Case of Pirates, a Crime which, as I before observ'd, scarce deserves any Law at all: Besides, the late Statute hath appointed such Commissioners, as will take Care to do equal Justice to the Prisoner on the one Hand, and to the Crown and Allies of England on the other. The English Word Pirate, is derived from a Word that signifies *Raiding*; for Pirates, like Beasts of Prey, are seeking and hunting upon the Ocean, for the Estates, and sometimes the Lives of the innocent Merchant and Mariner: His Character and Description is this; A Pirate is one who, to enrich himself, either by surprise, or open Force, sets upon Merchants and others trading by Sea, to spoil them of their Goods or Treasures, and sometimes taking their Vessels, and depriving them of their Lives: And 'tis no wonder if Pirates be reckon'd a much greater and more pernicious Crime than Robbery upon the Land, because the Confusion of the General Navigation, and Commerce of Nations, is far beyond any Man's particular Property: Besides, whereas Robbery upon the Land is most commonly from particular Persons, a Pirate is from many, and either attended with the Death of others. Thus it was in the Case now to be tried; one of the Captains of one of the Portuguese Vessels being unfortunately, if not badly kill'd and murder'd in the Action. But before we proceed to the several Articles upon which the Prisoner is to be tried, I beg leave a little to set forth the aggravating Circumstances of the Crimes committed by these vile Men: And to begin with their Murders, their robberies, inhuman, I with I might not say, their monstrous Use of their worthy Commander, *Captain Parsons*: God knows how in their Treatment of him might lessen his End; however, that must be answered for at a higher Tribunal. The next Thing I would observe in this Matter, is their Commission which they obtain'd from Her Majesty's Government of this Province, a Sword to fight the open and declared Enemies of Her Sacred Majesty; but, instead of drawing it against the French and Spanish, they have directed it in the Bowels of Love of the best Friends and Allies of the Crown of England to this Day, the Portuguese being Confederates with Her Sacred Majesty against the French and Spanish, for the Peace, Rights, and Liberties of Europe. This was the Betrayal, the Treachery, and Contumacy of this Matter, that instead of fighting for Honour with the French, or Money with the Spanish, they will go and surprise a

Colours, which were *Portuguese*; her *English* was not up till within half an Hour before she was taken; I was sent on board her, but Captain *Quelch* was there, many of our Men had entered her before he did; I had about thirty-five Men and twelve Guns: When the Ship fired upon us, we had *English* Colours flying; we kept the ship for some time, and took out of her what is far richer in the North Atlantic. This Ship came from a *Portuguese* Galleon, had been out about twenty-four Hours, and was bound for *Spain*.

Prisoner. Set up the *Negro* Boy who was taken in this Ship, which being done, and examined by the Interpreter, with his Name is *Estevan*, that he was captured, first in the River of *Spain*; his Mother's Name was *Isabel*, was a *Portuguese*, and Captain of the Ship that was taken by the *Portuguese*, in the River of *Spain*; that he was one of *Quelch's* Company; that his Mother was a *Portuguese*; that his Mother died suddenly of that Wound; that he heard say the Words, *And he says*: Says, that there were no more Men killed on board besides his Mother, only two wounded: Adds, that his dead Mother was thrown over-board immediately after his Death; and says, if the law the *Portuguese* at the Bar came on board the *Portuguese* Ship, and with a *Canoe* and two *Boats*.

After this, the Interpreters were directed to examine both the *Negro* Boy, & what their new Mother had then say of themselves when they came to *Spain*; to which the *Negro* Boy made Answer, That their Mother had then say, they were not *Portuguese*, but *Spanish* *Negro* Boys.

Court. Now, Have you any thing further to offer to the Court relating to the *Prisoner*?

Answer. When we came about the Latitude of *Bermuda*, the Company sent me my Journal to be taken from me, I had I had not something that might do them Damage, and relating to their own self, what Captain *Quelch* would have had me, he took it out himself, about five or six Lines, from *Osborne*, to *February* 22, that they committed their Piracies. Captain *Quelch* made a Speech, telling them, What they should say when they came on Shore; as that he had not with some *Indians*, who had got that Treasure out of a *Wreck*, of whom we had our Gold, and without we never had any Gold from our *Indians*, it being but once that any of them were on board of us, and then we did not trade with them. It being now late, the Court adjourn'd till Four o'Clock in the Afternoon.

Monday, Four o'Clock in the Afternoon: *Clifford*, the second Witness, was sworn, and *Power* removed out of hearing.

Prof. You are now to answer the Majesty's Commissioners of this Court, of what you knew relating to the *Prisoner* at the Bar, his being Guilty of what he is charged with in those Articles which you have heard read.

Clifford. Yes, Sir, I shall, and I will begin with the taking the *Doe* upon our Captain *Phanous*. *Peter Rankin*, one of the Company, kept the *Doe* by Order of *Anthony Halden*, and some others that rode up to run away with the *Vessel*. The *Prisoner* at the Bar was then on shore, but when he came on board, did not object against what was done, or what they were intending to do: *Quelch* then at that Time had been Commanded, but *Halden* was the *Ringleader*, and had the Majority of the Crew on his Side. *Power* was myself offered to go on to the Captain, but the Counsel, that guarded the *Doe* with a *Sword* in his Hand, would not let us.

Prof. Let the Articles be read, and let the Evidence say what he can to each of them.

Art. 1. read. *Clifford.* The first Prize that we took any thing out of, was a *Fishing-Boat*, out of whom we took some Fish and some Salt, near *Paradise*, and that which induced me to think it was a *Portuguese* *Vessel*, was, because 'twas taken near their own Shore: But I do not understand the *Portuguese* Language.

Art. 2. read. *Clifford.* This was the Second *Vessel* we took, a *Brigantine* that we carried with us during the Voyage, *Quelch* was then our Commandant, and went on board the said *Vessel* himself.

Art. 3. read. *Clifford.* I remember well the taking of this *Vessel* by *Quelch* himself, we carried a *Pilot* along with us, who told us they were *Portuguese*. *Peter Tawley*, who is since dead, was the *Interpreter's* Name. One of the *Prisoners*, who was first taken, understood a little *English* by this Time, and then said what was the Reason that we, being *English*, took the *Portuguese*. And one of our Men, named *John Taylor*, the *Dutchman*, was what, for telling them we were *English*.

Art. 4. read. *Clifford.* I remember the taking this *Vessel* very well, he was taken by one of the *Prize* *Vessels*: I saw the *Eastward* were that was taken; we were all along, during the Captivity, in Sight of the Shore, and near *Osborne*.

Art. 5. read. *Clifford.* I remember the taking of this *Boat* by Captain *Quelch*; the Men that we took were *Portuguese*; as we were told by our Interpreter. I do not remember any of the *Vessels* we had yet taken had Colours.

Art. 6. read. *Clifford.* I saw the Bag of Money, but cannot tell how much there was of it. The *Negro* Boy, *Cafra*, was then taken; as I felt he wanted on the whole Ship's Crew, but then was sold at the Mark to *Benjamin Perkin*: This *Vessel* was taken by a *Tender*, with about Fifty Pounds, all whole Money.

Art. 7. read. *Clifford.* I remember this *Vessel* was taken by our *Tender*, near the Island of *Gouadalupe*: I saw the *Sugar* brought on board (the *Brigantine* *Charles*) and some of the Gold; there was only one *Dutchman* in this *Vessel*, who sent'd himself with us for the Voyage. But because the Company voted he should not have full Share, he threatened, when he came on Shore, what he would discover; upon which they voted him to be put on Shore, Captain *Quelch* being present at their Vote.

Art. 8. read. *Clifford.* I was not in the Boat that took this *Brigantine*: I saw the Hundred Pound Weight of Gold Duff on board the *Brigantine* *Charles*, which Captain *Quelch* had among us. There might be about Fifteen or Sixteen Men, with two Women, on board the *Brigantine* that was taken, she came from *Spain* South, and was bound for *Rio de Janeiro*, she was taken by our own *Privateer*, with half a Score Men, the *Prize* sent not in it.

Art. 9. read. *Clifford.* I was on board this Ship when she was taken, and so was the *Prisoner* at the Bar. It was thought the Captain of her was wounded before we boarded her, but there was some Dispute among the Men, which of them it was killed by, Captain *Quelch* command'd the

Brigantine when we took her. We took Ten or Twelve *Dutchmen*, and a *Pipe* of *Rum* in her, and sundry other Things. A few such as *London* as that which was shown in Court in the Forenoon, on board some Ship. We took, like that *Negro* Boy, who was in the Court in the Forenoon.

Then *Clifford* was by, and *Power*, the third Witness for the Queen, was brought in.

Prof. *Prisoner.* You are now to give an Account to His Majesty's Commissioners of this Court, of what you knew relating to the *Prisoner* at the Bar, his being guilty of what he is charged with, in those Articles which you have heard read.

Power. I can say nothing as to the *Prisoner's* Carriage towards Captain *Phanous*, but the *Cabin* Door was bolted upon him, and I believe, was a *Portuguese* Thing, but we were of the Land; the *Prisoner* at the Bar was not on board till Night. When the Captain was thrown over-board, he took upon him the Command, and order'd us to sail to sea.

Art. 1. read. *Power.* We were not in Sight of Land, but believe the *Vessel* to be *Portuguese*, being upon the *English* Coast.

Art. 2. read. *Power.* I saw the Captain of this *Vessel*, which was a *Brigantine*, she was taken by the little *Fishing* *Shallop*, commanded by Captain *Quelch*: I was afterwards on board her, and saw the *Sugar* brought on board the *Brigantine* *Charles*.

Art. 3. read. *Power.* Do you remember the Caption of this *Vessel*?

Power. I do not remember it very well. Captain *Quelch* was on board the *Vessel*; that took her, we kept her two or three Days.

Art. 4. read. *Power.* What do you know concerning the taking of the *Vessel*?

Power. I remember the *Vessel* with *Carthen* were; it was an *English* *Vessel*, taken in Sight of Land. There was *Molasses* in the *Port*; there were Men and Women on board her, whom we took on board the *Brigantine* *Charles*. We left the *Boat's* *Rudder*, so that she could not sail, wherefore we took her in Tow; and taking out what we had need of, we then sunk her. Captain *Quelch* and I were in the *Brigantine* that took the *Vessel*.

Art. 5. read. *Power.* Do you remember the Caption of this *Vessel*?

Power. Yes, I had some of the Salt taken in this *Vessel*; so much as would make a *Pair* of *Shoes*. We took all their *Fences* after the little *Fishing* *Boat*, in Sight of the Shore, as near as I can remember.

Art. 6. read. *Power.* As before.

Power. As I remember this Caption; the *Prisoner* at the Bar was at it; they were *Portuguese* that were on board. I was put on board that Boat that *Cafra* was taken out of, and out of that Boat I took about Twenty or thirty Pounds of *Portuguese* Money. She had *Rice* and *Peas* in her, which we took out of her.

Art. 7. read. *Power.* As before.

Power. As I believe this was the *Brigantine* we took at an *Anchore* before the Town. I went to fetch her myself; Captain *Quelch* went over with us; we took Four or Five Chunks of *Black* *Sugar*, all the Men had run away, and left the *Brigantine*, only one Man, who at first told us was a *Dutchman*, but afterwards we found he was a *Portuguese*.

Art. 8. read. *Power.* As before.

Power. As Captain *Quelch* did not take this *Vessel*, he was taken by our Boat, but I was not in the Boat that took her. Captain *Quelch*, the *Quartermaster*, and *Carpenter*, shared the Hundred Pound Weight of Gold Duff among us.

Art. 9. read. *Power.* As before.

Power. As I was present at the Caption of this Ship: Captain *Quelch* was the Commander of the *Brigantine*, we saw the last Ship Two or Three Days before we took her. I saw the Colours, that were in *Osborne* to-day, first on board our *Brigantine*. We took itself, *Sails*, *Ships*, *Boards*, *Four* *Guns*, and an hundred Pieces of *Light*, and *Gold*, and a *Negro* Boy, whom one *George Norton* bought. The Captain was thrown over-board before I came on board; he was said to be killed by *Sunderland*, our *Coxswain*.

Prof. *Power.* And was the *Prisoner* at the Bar Captain of your *Brigantine* during all this Time that you took these several *Vessels* you have mentioned?

Power. As I say; and a little before we came in, it was agreed that we should say, We took our Gold out of a *Vessel*, that ran about about *Port* *Molasses*, but that the *Indians* were first at work upon her. *Anthony Halden* had called us upon *Drake*; *Power* said at first, they had taken our *Journal*, and that they order'd every one to throw over-board whatever was in the *Ship*.

Prof. *Power.* or *Clifford*, have you any thing further to offer?

Clifford. As I saw the Captain take *Power's* *Journal* out of his Hands, and order it to be torn out, and all *Portuguese* Prints to be thrown over-board. We were all upon the Deck, when it was concluded we should say, we had taken the Gold out of some *Wreck* that the *Indians* had acquainted us with.

Power. I saw the *Man* whips, that told them the *Brigantine* belonged to *New-England*. The *Captain* and *Quartermaster* order'd him to be whip'd. *Anthony Halden* was the Man who whip'd him. I was down below when the Agreement was made, what we should say when we came aboard, and was struck by *Power* when I came upon Deck, because I was not present.

Mr. Norton. May I please your Excellency, Yes. We shall now (though there be no Necessity for it) prove, that *Power* swore, and at the Time that these several *Prisoners*, *Power*, were committed, He swore *Majesty* and the King of *Portugal* were entered into a *Treaty* Alliance.

Upon this, Two *London* *Gazettes*, dated in the Months of *May* and *July*, 1723, were produced, and Two *Paragraphs* were read, viz.

Paragraph. *May* 24. The Treaty of Alliance, between the Emperor, His Majesty, the King of *Portugal*, and the States General, which had been to long talk'd of, was signed at *Lisbon* the 15th Instant, N. S. and is brought forth by an *Excerpt*.

Paragraph. *July* 14. Yesterday the Ratification of the Treaty, lately concluded at *Lisbon* with the King of *Portugal*, passed the Great Seal.

Prof. Gentlemen of the Queen's Council, Have you now done on the Queen's Part?

Queen's Council. Yes, Sir; we have gone through the Court of the Queen's Evidence against the *Prisoner* at the Bar.

Prof.

Quelch, and Atkins, and assigned upon the Articles of Piracy, &c. afterwards, (Mr. Mayne) and several Pleas, &c. Not Guilty.
Quelch's Pleas. Mayne is pleads your Ex. cellency, and the rest of the Court, Commissioners of this Court, the three Professors now at the Bar are of different Countries, His trust, from the rest may have been *and upon this Article*, but it is very well known, that the first and most famous Pirates that have been in the World were of the Country and Negroes, though Slaves, are as capable of taking away the Lives and Limbs of Mankind, as any Freeman in the World, and if we prove that these Fellows have been as active at this Matter as the rest of the Company, we doubt not but you will think and adjudge them equal in guilt with the rest.

Prof. Powell, look upon the Professors now at the Bar, and assign the Cause, Whether they were on board the Brigantine *Charles* during your last Voyage, and how they behaved from this while they were on board.

Pow. (Leading in de Profisurs.) These three Negroes were on board during the whole Voyage, but were not active, nor did they any thing but as they were commanded, *Capt. Powley and Charles* were the Cooks as the Brigantine, and boarded the *Frigate* when they were commanded, but handled the Arms; neither did *Atkins*.

Clifford and Parris being examined, affirmed the same Thing.

James farther added, that he knew *Mayne* to have been Capt. *Pharmor's* Slave, and that he brought him from Guinea.

Mr. John Gower informed the Court also, that the other two Negroes, *Capt. Powley* and *Charles*, were his Brother *C. Smith* *Henry's* black; that he did not run away from their Master, but were forcibly carried away by *Capt. Smith* and his Company.

Upon this, the Court being cleared, in less than Half an Hour was open again, and the three Negroes assigned brought in.

Prof. Charles Powley, Charles, and Atkins, you have been charged with several Articles of Piracy, &c. to which you have pleaded, Not Guilty; this Court has considered of the Matter, and declares you to be Not Guilty.

Whereupon they were ordered upon their Knees, &c.

After this, *Mr. Mayne* moved for leave further Time for the rest of the Professors, and then the Court adjourned 'till three o'Clock Afternoon.

Then P. M.

The Court was opened, and Proclamation made: Then *Lambert, White, Shawcross, Reed, Perkins, and James*, were set at the Bar, and after some little Time, upon *John Lambert, and Charles James*, desired that they two might be tried by themselves; upon which the Court ordered the Bar to be taken from the Bar; and then the Court proceeded to examine the Witnesses on Behalf of the Queen against the Prisoners.

Prof. Power, What do you know as to *Lambert's* being concerned in committing *Capt. Pharmor's*, and slaying the Voyage?

Pow. I don't say that either he or James were concerned in holding the *Cibola* down, but they were both on board when we came to fill; and though they did not they were unwilling to go to the Southwest, yet after *Capt. Pharmor's* Death, there was a Consultation held, and both *Lambert* and *James* were at it; and I know nothing to the contrary, but that they conspired with the *Ship*.

Ques. Please to let the Articles be read to the Witnesses, and then ask, how far *Lambert* and *James* were concerned in all, or any of them.

Art. 1. read. Witnesses. *Lambert* and *James* were on board when we took that Vessel, and so to the second and Third, Fourth and Fifth.

Prof. And as active as any of the rest?

Witnesses. Yes.

Art. 2. read. Witnesses. They were both on board our Brigantine when this was done, and sailed at the Seventh and Eighth Captains.

Art. 3. read. Witnesses. *Lambert* was on board the Tender, above a Mile off at that Time, but *James* was one that boarded the Ship.

Prof. Lambert and *James*, would you ask the Witnesses any Questions?

Lambert. I was sick when in the Gun-room when they boiled the *Beer* upon the *Table*, and never gave my Consent to go to the South-west.

What I did, I was forced to.

Prof. James. Did you ever hear *Lambert* protest against any of these points, or did he desire to be set on Shore?

James. He did desire to be set on Shore; but it was before the Captain went from *Narragansett*. I never heard any of them mention their Desire as to our going to *Providence*, but were as forward as the rest were.

Prof. Power. Do you know whether *Lambert* and *James* had their Share of the Treasures?

Witnesses. They had each of them their Shares.

Prof. What say you, James?

James. I was contradicted against my Will to go to Sea, and was deluded by *Atkins*.

Prof. Power. What say you as to *James?*

James. I cannot say that he had any Thing of what he pretends he said, but that he was unwilling to pilot the Ship, which I judged was, because he was averse to the Voyage.

Prof. Did you hear *Lambert* advise the Captain to go off from the Coast of *Brill* against some known Enemy?

Witness. No, we never heard him give any such Advice.

Prof. I have heard him several Times declare himself against the Voyage, but never express himself forward for, or pretend against any of the Prisoners, nor *James* either.

Prof. You have brought in a very considerable Treasure with you, wherein each of you had your Share: Whereat had you it? Where are the *French* and *Spanish* you took it from?

James. It was the Commander did it; and we were not on board the Vessel that took the *Gold* Duff. The Reason we accepted of our Shares was, because otherwise they would have killed us, or let us upon some desolate Island, where we should have been starved.

Lambert. I was only at the taking of two of the Vessels; and you may be sure I would never have come Home as the Vessel, if I had thought I had done any Thing worth, or that I should have been assigned for.

The Prisoners being nothing farther to offer, the Court was ordered to be cleared, and as some little Time was opened again, and the Prisoners set at the Bar.

Prof. John Lambert, and Charles James: you have both been assigned upon several Articles of Piracy, &c. (count 7 Articles) which either upon the Subjects of her Majesty's good Ally, &c. to which you have pleaded, Not Guilty: You have heard thirteen, what you had to say for yourselves: I am Court having considered the Evidence for the Queen against you, and your own Allegations for you, do adjudge each of you Guilty of the several Articles of Piracy, &c. What have you to say, why Sentence of Death should not be pronounced against you?

Atkins. We must leave it to God and your Honor. We are as innocent as the Child unborn of this.

Prof. James: as to the Sentence of the Court, &c. without.

Then Sentence was pronounced by the President of the Court, as the Law directs in Cases of Piracy, &c.

After this, *Benjamin Perrier, William White, Christopher Sawdover, and Peter Ruch*, were set at the Bar.

Ques. That *Sawdover* be tried by himself, and the rest taken from the Bar.

Several Articles being read to the Witnesses, they all swore, That *Sawdover* was with them all the Voyage, that he was very active at every Thing, and that he had his Share of the Gold.

James's Advocate. May it please your Excellency, we shall farther prove against the Prisoner at the Bar, That he was the only Man who gave the mortal Wound to the Captain of the *Perseus* Ship.

Prof. Power. What do you know as to that?

James. There was a Court sitting on board our Brigantine, concerning who it was that killed the Captain of the *Perseus* Ship, *Sawdover* saying, it was he, and another said, it was he that did it.

Prof. Set up the Negro Boy who was taken on that Ship.

The Negro Boy being set up, was bid to look upon the Prisoners, and say, Whether it was he that killed his Master?

And the Interpreters reported to the Court, That the Negro Boy said, That was the Man who killed his Master, and that he killed him with a Pistol; that his Master laid down immediately, and did not speak a Word.

Prof. What say you, Sawdover?

Sawdover. I did not kill the Captain of the *Perseus* Ship.

Prof. Where is your Gold?

Sawdover. I can't tell: What I said upon my first Examination about it, is false.

Prof. Have you any thing farther to say?

Sawdover. No.

After this, a Pension was given into Court, signed by several of the Prisoners, viz. *William White, John Dorrin, David Carter, P. Ruch, Francis King, John Pinner, Richard Lawrence, Benjamin Perrier, English Perrier, John Carter, Nicholas Richardson, John King, John Ash, William James, and Charles King*, praying that they might withdraw their several Pleas of Not Guilty, as he admitted to commit and plead Guilty, having the Captain for the Queen's Mar 7, &c.

Upon which they were each of them asked, Whether they felt their Hands to the Petition? And they all severally answered they did.

Prof. You who have here subscribed this Pension, must be told, that your Commander, and some others of your Company, have had their Trials, and are found Guilty: We don't take your plea taking Guilty now so as by Submission, nor will it at all entitle you to Mercy, this Court can make no Bargain with you: If any of you can be distinguished, as being second away, protesting against the Voyage, sickness, or the like, this Court will consider of it, in so far as is proper for them.

Mr. Ruch. You must ask each of the Prisoners, one by one, Whether they are Guilty, or Not Guilty, of what they are charged with?

Prof. How say you, *Richard Lawrence*, Are you Guilty, or Not Guilty?

Richard Lawrence. Guilty.

So did *Benjamin Perrier, John Carter, Francis King, Peter Ruch*, &c. the rest of the Prisoners.

After this, *John Miller* was set to the Bar.

And the Queen's Witnesses being examined about *John Miller*, made Oath, that he was on board the Brigantine *Charles* during the Voyage, and did not protest against going upon the Coast of *Brill*; that he was in Health, and temperate, at the Time of every Captain, as the rest were, and had his Share of the Gold, &c. that was taken.

Miller. Saying he was sick some Part of the Voyage.

Witnesses. He was fit, but was well again before we made our last Capture. (Article 4th read.) He was at this Captain well in Health, and confiding to us, to do the 6th and 8th Articles, and at the taking of the Prize in the 9th Article. (Article 10th read.) He was then on board the Tender that took the *Gold* Vessel. (9th Article read.) He boarded that Ship with Sword and Pistol.

Prof. What have you to say for yourself? You have heard what has been proved against you.

Miller. I was at the taking of the Ship and a Bark; but did not know what they were, for they showed no Colours.

Prof. Power. Did you ever hear any of your Company say, as if *Miller* was one of *Atkins's* Crew?

James. I heard some of them say, they heard him say to himself, so said *Clifford*.

Miller. I was none of *Atkins's* Company.

Prof. Set *John Tomlinson* at the Bar, which you done; and the Queen's Witnesses being sworn, &c. asked, That *John Tomlinson* was on board the Brigantine all their late Voyage, and that he did sometimes bear Arms, but being not above fifteen Years of Age, they allowed him but Half a Share, which his Master was also to have: That he was for two Months together Cook on board the Tender, but being not a Boy, he had no Vote with the rest of the Company, but was entered as every one pleased.

Mr. Henry Frick being sworn, deplored, That the Prisoner at the Bar was his Servant, and that he put him on board the Brigantine *Charles* as such, upon Captain *Pharmor's* Request: That he saw him by the *Rev. Dr. Keeling* after the *Prize* came in, and that his Share of Gold was never

never in his own Keeping, for that the Company would not trust him with it, but he receive it for him.

Prof. Templeton, What have you to say?

Templeton, I have nothing to say, but that my Master sent me out, and I know not whether we were wrong.

And after this, *William Whiting* was set to the Bar, and charged with the same Articles of Piracy, &c. who thereupon pleaded Not Guilty.

And *Pinner* and the rest of the Writars being examined concerning him, informed the Court, That from the first Time of their coming upon the Coast of Brazil, unto their coming Home, *Whiting* was sick, and never bore Arms, being utterly incapable of doing any thing.

Prof. Had he any Share?

Whiting, He had sixteen Ounces offered him by the Company; but they told him it was not for his Defects, but out of their Generosity that they gave it him.

Prof. Did he express any Dissatisfaction at what was done?

Whiting, No, nor that I heard; but he was taken sick on the Beginning of November, and came very sick a-shore.

E. Smith, Esq. Whiting, upon his Examination, told me, That he had been acquainted with Captain *Pinner* at New-York, and that it was out of Respect that he had for him that he came hither, and went the Voyage.

Mr. William Clark sworn.

Deposited, That Captain *Pinner* sent for *Mr. Gilson* and himself, and recommended the Prisoner to them as a Person fit to be Clerk, or Secretary on board the Ship, and to take an Account of all their Affairs; and that Captain *Pinner's* Letters to them were written by the Prisoner; and when he came ashore, he was in a very low Condition; but said, when he was able, he would do them all the Service he could.

Pinner, I know of his writing Letters from Captain *Pinner*.

Prof. Would you say any thing yourself, *Whiting*?

Whiting, I never went in any Action, being sick all the while we were on the Coast of Brazil, and did not discover their Piracy when I came on Shore, because I was then very sick, and like to die.

The Court was ordered to be cleared, and then adjourned to nine o'Clock next Morning.

Wednesday, June 21, A. M.

The Court being opened, and Proclamation made, *John Templeton* and *William Whiting* were set to the Bar.

Prof. John Templeton, This Court has considered your Case, and have been very respectful to you in regard of your Youth, and have adjudged you to be Not Guilty.

And you also, *William Whiting*, the Court has considered of your Case, and have adjudged you also to be Not Guilty. Upon which each of them upon their Knees thanked the Court, &c.

After which, *Christopher Scudmore* and *John Miller* were set to the Bar.

Prof. Scudmore and *Miller*, upon hearing the Queen's Evidence against you, and your own Allegations for yourselves, this Court doth adjudge you both to be Guilty of what you have been charged with. What have you to say, why Sentence of Death should not pass against you?

Scudmore, I had no Hand in altering the Voyage, nor killing the Portuguese Captain.

Miller, I was never alive after the Voyage was altered.

Prof. Attend to the Sentence of this Court against you.

This Sentence was pronounced by the President of the Court, as the Law directs in Cases of Piracy, &c. against the said *Scudmore* and *Miller*.

Ordered, That all the rest of the Prisoners that pleaded Guilty, be brought to the Bar.

Prof. Set seven of them to the Bar.

Then *William White*, *John Durst*, *Dennis Carter*, *Peter Reach*, *Francis King*, *John Pinner*, and *Richard Lawrence*, were set to the Bar.

Prof. You, and each of you, have been arraigned upon several Articles of Piracy, &c. to which you have severally pleaded Guilty. What have you to say, why Sentence of Death should not pass upon you?

Ans. Nothing.

Prof. Then attend to the Sentence.

This Sentence was pronounced by the President of the Court, as the Law directs in Cases of Piracy, &c. against the said seven Persons last named.

Prof. Set the rest to the Bar.

Benjamin Perbit, *Erasmus Peterkin*, *John Carter*, *Nahiel Richardson*, *John King*, *James Ayton*, *William Jones*, and *Charles King*, were set to the Bar.

Prof. You, and every of you, have been arraigned upon several Articles of Piracy, Robbery, and Murder, unto which you, and each of you, did plead Guilty. What have you to say, why Sentence of Death should not pass against you for the same?

Ans. We leave ourselves to God Almighty.

Prof. Attend then to the Sentence.

This Sentence was pronounced by the President of the Court, as the Law directs in Cases of Piracy, &c. against the eight Persons last named. And then the Prisoners were all remanded to Prison, and the Officer charged to take great Care of them.

On Friday, June 30, 1704, *John Quelch*, *John Lambert*, *Christopher Scudmore*, *John Miller*, *Erasmus Peterkin*, and *Peter Reach*, were executed in *Chapel-River*, between *Brighthelm's* Wharfe and the Point.

As to most of the *Behnbrother*, and last *Dying Speeches*, of the six Persons that were executed as *Charles Renner*, *Bolton* died, on Friday, June 30, 1704, viz. *Captain John Quelch*, *John Lambert*, *Christopher Scudmore*, *John Miller*, *Erasmus Peterkin*, and *Peter Reach*.

ON Friday the 30th of June, 1704, pursuant to Orders in the Dead Warrant, the aforesaid Persons were guarded from the Prison in *Bytton*, by forty Malefactors, Constables of the Town, the *Peace-Marshall*, and his Officers, &c. with two Ministers, who took great Pains to prepare them for the last Article of their Lives. Being allowed to walk on Foot through the Town, to *St. Mark's* Wharf, where the Silver Car being carried before them, they went by Water to the Place of Execution, being surrounded and guarded on all Sides with Multitudes of Spectators.

At the Place of Execution, they then severally spoke as follows, viz.

I. *Captain John Quelch*. The last Words he spoke to one of the Ministers at his going up the Stage, were, *I am not afraid of Death, I am not afraid of the Gallows; but I am afraid of what follows: I am afraid of a Great God, and of a Judgement to come.* But he afterwards seemed to brave it out too much against that Fear: Also when on the Stage, first he pulled off his Hat, and bowed to the Spectators, and not concerned, nor behaving himself so much like a dying Man as some would have done. The Ministers had, in the Way to his Execution, much desired him to glorify God at his Death, by bearing a due Testimony against the Sin he had ruined him, and for the Ways of Religion which he had much neglected. Yet not being called upon to speak when he had no say, it was but thus much: *God bless 'em! 'Tis all I have to speak: What I have to say is this, I desire to be informed for what I am here: I am condemned only upon Circumstances; I forgive all the World: To the Lord be ascribed to my soul.* When *Lambert* was warning the Spectators to beware of bad Company, *Quelch* joining, *They should take care how they brought Money into New-England, it is bought for it.*

II. *John Lambert*. He appeared much haughty, and pleaded much on his Innocency: He desired all Men to beware of bad Company; he seemed in a great Agony near his Execution: He called much and frequently on CHRIST for Pardon of Sin; that God Almighty would save his innocent Soul: He desired to forgive all the World: His last Words were, *Lord forgive my Soul! O God, receive me into Glory! My Name of Christ is Jesus my Lord.*

III. *Christopher Scudmore*. He appeared very penitent since his Condemnation; he was very diligent to improve his Time going to, and at the Place of Execution.

IV. *John Miller*. He seemed much concerned, and complained of a great Burden of Sins to answer for; expressing often, *Lord! What shall I do to be saved?*

V. *Erasmus Peterkin*. He cried of Injustice done him; and said, *It is very hard for my many Miles' Lives to be taken away for a little Gold.* He often said, *His Peace was made with God; and his soul would be with God; yet excuse him hard to forgive those, he said, wronged him: He told the Executioner, He was a strong Man, and prayed to be put out of Misery as soon as possible.*

VI. *Peter Reach*. He seemed little concerned, and said but little, or nothing at all.

Francis King was also brought to the Place of Execution, but relieved,

LVI. *The Trials of Daniel Dammarce, a Waterman, Francis Willis, a Footman, and George Purchase, a Sheriff's Officer, for High-Treason, in levying War in the Kingdom, against the Queen, under Pretence of pulling down Meeting-Houses.* 9 Annæ, 1710.

[At the Sessions-House in the Old-Bailey.]

D^{ns} Martin, D^{ns}les Ottens D^{ns} Arville, D^{ns} Duvoni, 1710, D^{ns} Anne, D^{ns} Grove, D^{ns} Briccaux, Frensis, & Hilaria Regine, &c. N^{rs}.

A BILL of Indisment for High-Treason, in levying open War against her Majesty, having been found Yesterday by the Grand Jury for the County of Middlesex, at *St. Mark's*, against *Daniel Dammarce*, *Francis Willis*, and *George Purchase*, the Prisoners, being in Custody of the Keeper of Newgate, the Court proceeded thus: Clerk of Arraignment. Set *Daniel Dammarce* to the Bar.

(Which was done.)

Clerk of Arr. *Daniel Dammarce*, Hold up thy Head.

(Which he did.)

Vou. VIII.

You stand indicted by the Name of *Daniel Dammarce*, late of the Parish of St. Clement Dunes, in the County of Middlesex, Labourer; for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and seduced by the Inligation of the Devil, the Love, and trust and due Obedience which every true and faithful Subject of our Sovereign Lady Anne, by the Grace of God, of Great Britain, France, and Ireland, Queen, Defender of the Faith, &c. towards our said Lady the Queen should, and of Right ought to bear, wholly withdrawing, and conspiring, and with all your Strength intending the Peace and common Tranquillity of this Kingdom of Great Britain to disturb; the first Day of March, in the 9th Year of the Reign of our said sovereign Lady the Queen, that now is, at the Parish of St. Clement Dunes aforesaid, in the County of Middlesex,

aforsaid, falsly, unlawfully, devilishly, and traitorously, did compass, imagine, and intend upon War, Infurrection, and Rebellion, against our said Lady the Queen, within this Kingdom of Great-Britain, to raze and levy: And your said Treasons, Conspings, Imaginations, and Intentions to fulfil and bring to effect, you the said *Daniel Dammarée* afterwards, that is to say, the said First Day of *March*, in the Ninth Year aforesaid, in the said Parish of *St. Clement Danes*, in the County of *Middlesex* aforesaid, by Force and Arms, against our said Sovereign Lady the Queen, your Sovereign and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Persons, armed and arrayed in a warlike Manner, that is to say, with Colours flying, Swords, Clubs, and other Weapons, as well offensive as defensive, unlawfully and traitorously being assembled and gathered together, publick War against our said Lady the Queen, at the Parish aforesaid, in the County aforesaid, the Day and Year aforesaid, traitorously did prepare, begin and levy, against the Peace of our said Sovereign Lady the Queen that now is, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Cler. of Arr. How say you, *Daniel Dammarée*, are you Guilty of the High Treason, for which you have been indicted, and are now arraigned, or Not Guilty?

Dammarée. My Lord, I was too much in Liquor, that I do not know what I did.

Mr. Serj. Ribblesdale. You must now plead either Guilty, or Not Guilty. If you plead Not Guilty, you will be put upon your Trial, and be heard fully in your Defence, by yourself, or Counsel.

Cler. of Arr. Are you Guilty, or Not Guilty?

Dammarée. Not Guilty.

Cler. of Arr. *Calvary.* How wilt thou be tried?

Dammarée. By God and the Country.

Cler. of Arr. God fend thee a good Deliverance.

(Then the Prisoner was taken away.)

Cler. of Arr. Set *Francis Willis* to the Bar.—(Which was done.)

Cler. of Arr. *Francis Willis*, held up thy Hand.—(Which he did.) You stand indicted by the Name of *Francis Willis*, late of the Parish of *St. Andrew, Holborn*, in the County of *Middlesex*, Labourer, for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and seduced by the instigation of the Devil, the Love, and true, and due Obedience, which every true and faithful Subject of our Sovereign Lady Anne, by the Grace of God, of Great-Britain, France, and Ireland, Queen, Defender of the Faith, &c. towards our said Lady the Queen, and of Right ought to bear, wholly withdrawing, and conspiring, and with all your Strength intending the Peace and common Tranquillity of this Kingdom of Great-Britain to disturb; the First Day of *March*, in the Ninth Year of the Reign of our said Sovereign Lady the Queen, that now is, at the Parish of *St. Andrew, Holborn*, aforesaid, in the County of *Middlesex* aforesaid, falsly, unlawfully, devilishly, and traitorously did compass, imagine and intend upon War, Infurrection, and Rebellion, against our said Lady the Queen, within this Kingdom of Great-Britain, to raze and levy, and your said Treasons, Conspings, Imaginations, and Intentions, so fulfil, and bring to effect, you the said *Francis Willis* afterwards, that is to say, the said First Day of *March*, in the Ninth Year aforesaid, in the said Parish of *St. Andrew, Holborn*, in the County of *Middlesex* aforesaid, by Force and Arms, against our said Sovereign Lady the Queen, your Sovereign and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Persons, armed and arrayed in a warlike Manner, that is to say, with Colours flying, Swords, Clubs, and other Weapons, as well offensive as defensive, unlawfully and traitorously being assembled and gathered together, publick War against our said Lady the Queen, at the Parish aforesaid, in the County aforesaid, the Day and Year aforesaid, traitorously did prepare, begin, and levy, against the Peace of our said Sovereign Lady the Queen, that now is, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Cler. of Arr. How say you, *Francis Willis*, are you Guilty of the High Treason whereof you are indicted, and for which you are now arraigned, or Not Guilty?

Willis. I am entirely innocent.

Mr. Serj. Ribblesdale. Then plead Not Guilty; and if upon Trial you appear to be innocent, you will be acquitted.

Cler. of Arr. Are you Guilty, or Not Guilty? You must use the Words *Willis*. Not Guilty.

Cler. of Arr. *Calvary.* How wilt thou be tried?

Willis. By God and the Country.

Cler. of Arr. By God and the Country.

Cler. of Arr. God fend you a good Deliverance.

(Then he was taken away.)

Cler. of Arr. Set *George Partridge* to the Bar.—(Which was done.)

Cler. of Arr. *George Partridge*, held up thy Hand.—(Which he did.) You stand indicted by the Name of *George Partridge*, late of the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, Labourer, for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and seduced by the instigation of the Devil, the Love, and true and due Obedience, which every true and faithful Subject of our Sovereign Lady Anne, by the Grace of God of Great-Britain, France, and Ireland, Queen, Defender of the Faith, &c. towards our said Lady the Queen, and of Right ought to bear, wholly withdrawing, and conspiring, and with all your Strength intending the Peace and common Tranquillity of this Kingdom of Great-Britain to disturb; the First Day of *March*, in the Ninth Year of the Reign of our said Sovereign Lady the Queen, that now is, at the Parish of *St. Giles in the Fields* aforesaid, in the County of *Middlesex* aforesaid, falsly, unlawfully, devilishly, and traitorously, did compass, imagine, and intend upon War, Infurrection, and Rebellion, against our said Lady the Queen, within this Kingdom of Great-Britain, to raze and levy, and your said Treasons, Conspings, Imaginations, and Intentions, so fulfil and bring to effect, you the said *George Partridge* afterwards, that is to say, the said First Day of *March*, in the Ninth Year aforesaid, in the said

Parish of *St. Giles in the Fields*, in the County of *Middlesex* aforesaid, by Force and Arms, against our said Sovereign Lady the Queen, your Sovereign and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Persons, armed and arrayed in a warlike Manner, that is to say, with Colours flying, Swords, Clubs, and other Weapons, as well offensive as defensive, unlawfully and traitorously being assembled and gathered together, publick War against our said Lady the Queen, at the Parish aforesaid, in the County aforesaid, the Day and Year aforesaid, traitorously did prepare, begin and levy, against the Peace of our said Sovereign Lady the Queen that now is, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Cler. of Arr. How say you, *George Partridge*? Are you Guilty of the High Treason for which you have been indicted, and are now arraigned, or Not Guilty?

Partridge. Not Guilty.

Cler. of Arr. *Calvary.* How wilt thou be tried?

Partridge. By God and the Country.

Cler. of Arr. God fend thee a good Deliverance.

(Then he was taken away, and the Court adjourned to the Day following.)

Die Marturi, 29 Aprilis, 1709, 9 Anne.

Domine Reges veritas Domamur.

P R E S E N T

The Right Hon. Sir Samuel Garraway, Bart. Lord Mayor of the City of London; the Right Hon. Sir Thomas Parker, Knt. Lord-Chief-Justice of Her Majesty's Court of King's Bench; the Right Hon. Sir Edward Ward, Knt. Lord-Chief-Baron of Sir Majesty's Court of Exchequer; the Hon. Robert Tracy, Esq. One of the Judges of the Court of Common-Pleas; the Hon. Sir Thomas Bury, Knt. One of the Barons of the Exchequer, and a numerous Company of the Nobility, and Persons of Quality and Distinction.

Cler. of Arr. *Cryer*, make Proclamation.

Cryer. O Yes.

Cler. of Arr. Again, again.

Cryer. O Yes, O Yes. All manner of Persons that have any thing more to do at this General Sessions of the Peace, Sessions of Oyer and Terminer, holden for the City of London, and Goal Delivery of Newgate, holden for the City of London and County of Middlesex, and adjourned over to this Day, Draw near, and give your Attendance, for now the Court will proceed to the Pleas of the same City and County.

God Save the Queen.

Cler. of Arr. *Middlesex Cryer*, make Proclamation.

Cryer. O Yes, O Yes. You good Men of the County of Middlesex, summoned to appear here this Day, to try between our Sovereign Lady the Queen, and the Prisoners that shall be at the Bar, answer to your Names as you shall be called, every Man at the left Call, upon Pain and Penalties shall therein.

(Then the Jury that were returned in the Panel, were all called over, and the Approvers of all those that answered to the Call, were recorded.)

Cler. of Arr. Set *Daniel Dammarée* to the Bar.—(Which was done.)

Cler. of Arr. *Daniel Dammarée*, hold up thy Hand.—(Which he did.) *Cler. of Arr.* You the Prisoner at the Bar, thy good Men, whom you shall here be called, and do now personally appear, are to pass between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Cler. of Arr. Call Sir Edward Gould, Knt.

Gould. Here he is, Sir.

Cler. of Arr. To the Prisoner. There is Sir Edward Gould, Do you challenge him?

Dammarée. No, my Lord, I don't intend to make any Challenge.

Cler. of Arr. Then bid Sir Edward Gould the Book.

(Which was done.)

Cler. of Arr. Look upon the Prisoner.

You shall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence, So help you God.

Cler. of Arr. *Richard Browne*, Esq.

(He was sworn.)

The Prisoner making no Challenge, the following Gentlemen were sworn.

<i>Sir Edward Gould, Knt.</i>	<i>J U R Y.</i>	<i>Giles Riddle,</i>
<i>Richard Browne, Esq.</i>		<i>Thomas Dodd,</i>
<i>Peter Levinge, Esq.</i>		<i>Charles Williams,</i>
<i>Robert Borden, Esq.</i>		<i>Thomas Sutton,</i>
<i>Charles Botwiner, Esq.</i>		<i>Daniel Solomon,</i>
<i>Peter Levinge, Esq.</i>		<i>John Calvin.</i>

Cler. of Arr. *Cryer*, Court these.

Sir Edward Gould, Knt.

Cryer. One, and five of the right.

Cler. of Arr. *John Calvin.*

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

Are you all Sworn, Gentlemen?

Cler. of Arr. *Cryer*, make Proclamation.

Cryer. O Yes, if any one can inform my Lords the Queen's Justices, the Queen's Serjeant, the Queen's Attorney-General, or this Inquest now to be taken, of the High Treason of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance, to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance. And all Jurymen of Middlesex that have appeared, and are not sworn, may depart the Court for this Time, and give their Attendance here again to-morrow Morning.

Cler. of Arr. *Daniel Dammarée*, hold up thy Hand.—(Which he did.)

Gentlemen

Gentlemen of the Jury, look upon the Prisoner, and hearken to his Confess. He stands indicted by the Name of *Daniel Donnelly*, late of the Parish of St. Clement-Dani, in the County of *Midshire*, Labourer, for that he not loving his Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, &c. (proceeds in the Indictment, multis modis, against the Peace of our Sovereign Lady the Queen, her Crown and Dignity, against the Form of the Statute in that behalf made and provided. Upon this Indictment he has been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of the High-Treason wherewith he stands indicted, in Manner and Form as he stands indicted, or Not Guilty. If you find him Guilty, you are to inquire what Goods and Chattels, Lands and Tenements he had at the time of the High-Treason committed, or at any time thence. If you find him Not Guilty, you are to inquire whether he fled for it: If you find that he fled for it, you are to inquire of his Goods and Chattels, Lands and Tenements, as if you found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to say so, and no more, and hear your Evidence.

Foreman of the Jury. My Lord, here is such a great Noise in the Court, that unless a Stop be put to it, we shall not be able to hear the Counsel, or the Evidence: We humbly pray the Court may be kept quiet.

L. C. J. O'Yees, make Proclamation of Silence.

Crier. O'Yees, My Lords, the Queen's Justice, briefly charge and command all manner of Persons to keep Silence upon Pain of Imprisonment.

L. C. J. Gentlemen of the Queen's Council, be pleased to proceed.

The William Thornton of the Middle-Temple, Esq. (afterwards Recorder of London, and Baron of the Exchequer, &c.) for Counsel for the Queen, speak the Indictment thus.

Mr. Thornton. May it please your Lordship, and you Gentlemen of the Jury, *Daniel Donnelly*, the Prisoner at the Bar, stands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Instigation of the Devil, and desiring to withdraw the Cordial Love and Natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen do, and ought to bear towards Her, and intending to disturb the Peace and common Tranquillity of this Kingdom, on the fifth of March last, in the Parish of St. Clement Dani, in the County of *Midshire*, traitorously compassed and imagined to levy War, and stir up Rebellion and Insurrection against our said Lady the Queen within this Kingdom: And that he might accomplish his said Treasonous Imaginations and Designs, on the said fifth of March, and in the said Parish being assembled, with a Multitude and great Number of People armed, and arrayed in a Warlike Manner, he did then and there unlawfully and traitorously levy War against our said Lady the Queen, contrary to the Duty of his Allegiance, against the Peace of our said Lady the Queen, her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.

Gentlemen, if the Evidence for the Queen prove the Charge, as laid in the Indictment, 'tis your Duty to find him Guilty.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of the Jury, the Record that has been opened to you is an Indictment of High-Treason against the Prisoner at the Bar: It charges him with disturbing the General Peace and Quiet of the Realm, and exciting Rebellion within your Country. The Crime that this Indictment is founded upon, has in all Ages and Countries been accounted the highest Crime that can be committed against any State, or Government. The Laws of England are very express, that if any Man takes himself to be aggrieved by any Law whatsoever, and endeavour by Force to seek Redress of their Grievances, or to get any Reformation of those Things he complains of, and thus against the Civil Authority, it is levying of War, and is High-Treason within the Statute of the 25th of *Edw. III.*

That there has been an Insurrection within this County, not only in the Place mention'd in the Indictment, but in other Places, I believe is so well known to all here, that it would be superfluous Time to call many Witnesses to that matter. But it will be incumbent on us, now the Prisoner stands on his Trial, to shew what particular Part he had in this Business; and therefore we shall call many Witnesses to prove what Part he had in this Affair: And if they give the same Account that they have given in their Informations, we shall make it appear that the Prisoner at the Bar was the Ring-Leader of those Tumultuous and Rebellionary Persons, that assembled the fifth of March last; first to pull down the Meeting-Houses in the Neighbourhood, and after burning them, went on to pull down others.

The immediate Design which they pretended was, the pulling down the Meeting-Houses, that is, those Places which are allowed to hold in us unhappy enough to dissent from the Church of England, to meet in for their Religious Worship.

Whether *Mr. Burgh's* has given any Offence to the Prisoner, or whether any of the Congregation have given him any Offence, we shall hear from himself, but no Prover can justify such Rebellionary Tumults as were made on this Occasion: The Penances that are mentioned, will not excuse what the Law makes High-Treason.

It will be in vain for the Prisoner at the Bar, or any Person in his Circumstances, to pretend that he is a Friend to the Government, or a Loyal Subject, when he Acts thus: he is guilty of High-Treason. The Prisoner at the Bar stands doubly obliged to bear Faith and true Allegiance to Her Majesty, not only as all good Subjects are obliged to it, but as he is a Menial Servant to *Her Majesty*, for you will find that he was, at the time he committed this Treason, as *Her own Clerk*, wearing Her own Badge, which he was then acting in Rebellion against Her.

That this tumultuous Meeting was not accidental, will appear, when the Witnesses shew, That four Days before that, there had been great Disorders in the Streets: And the Night before, you will find by our Witnesses, that a great disorderly Tumult was in the Temple, and there it was raised upon, by these tumultuous Persons, that the Night fol-

lowing they would pull down *Dr. Burgh's* Meeting-House, and all the other Meeting-Houses thereabout. You will find, that was not only talk'd of, but put in Execution, by the Prisoner, and others with him: For, the Fifth of March, they fell the Prisoner, and about Five Hundred others, with Staves, and Clubs, and other Weapons, in the Indictment mention'd, both off-nire and defensive, these they were laying War, as the Law expresses it. And that the Darkness of the Night would otherwise have contrived him, yet the Fire they made in *Lincoln's-Inn-Field*, with the Materials of that Meeting-House, did afford Light enough for the Witnesses to give an Account of the Prisoner: How he went more forward than all the others; and that he was not content with doing the mischief he design'd there, but afterwards, as Head of the Mob, commanded them to go and assault at another, and they went with him, through *Wynd Street*, to *Drury-Lane*, to another Fire, that was made by another Company.

We shall shew, that it was not only at these Two Places, but that it was a general Design, to pull down all the Meeting-Houses at that time. And when we have made out this General Intention, and shew it was executed in this manner, we don't doubt, but you will all be sensible, that this Prosecution was very requisite: For it is the Interest of every honest Man to put an End to these Tumults and Disorders, hear their Opinions what they will. It is the Interest of all People (in order to enjoy what God has blessed them with, be it more, or less) to put an End to these Disorders: For there are like the great Tumults of Waters, that bear down all before them. Wherever these things are, all the Burglars and Robbers, and such Persons, join with them to do mischief.

We will call our Witnesses, and give an Account of what relates to the Prisoner, and they will make it appear, that he was chiefly concerned in this Insurrection; and see only said in *Lincoln's-Inn-Field*, but in other Places.

Mr. At. Gen. My Lord, the Facts that have been open'd by *Mr. Attorney*, we take to be fully and plainly Rebellion, and High-Treason: I shall not therefore trouble your Lordship with saying any thing more of the Facts, but only shewly here the Course of our Evidence.

We shall shew that there was a Design, the Day before these Meeting-Houses were pull'd down, to pull them down: That the next Day that Design was put in Execution: That the Prisoner was the most active among them, and took upon him to be the Leader, and Captain of the Mob, on that Occasion. And if this be made out, I hope it will give your Lordship, and the Jury, full Satisfaction, that he is Guilty of the Crime laid to his Charge in this Indictment.

Call *Thomas Selby*. (He is now sworn.)

Mr. At. Gen. Pray, give my Lord, and the Jury, an Account what you know of the Design and Intention of pulling down Meeting-Houses, and when, and where it was.

Mr. Selby. My Lord, I was passing through the Temple, on Tuesday Night, when I saw a great Mob. I heard them confab of demolishing the Meeting-Houses the next Day.

Mr. At. Gen. What Meeting-Houses did they talk of?

Mr. Selby. 'Twas *Mr. Burgh's* in *Lincoln's-Inn-Field*.

Mr. At. Gen. Was you among them?

Mr. Selby. No; I was passing through the Temple, and heard them talking as I pass'd.

Mr. At. Gen. How many were there together at that time?

Mr. Selby. I believe there were some four or five hundred.

Mr. At. Gen. When were they to be pull'd down?

Mr. Selby. Some were for pulling of them down then, and some were for leaving of them 'till the next Night, and others were for leaving of them alone, 'till the Event of *Dr. Saurin's* Trial.

Mr. At. Gen. What was the Occasion of the Meeting of that Mob that talk'd of this?

Mr. Selby. I don't know that.

Mr. At. Gen. Do you know that this Meeting-House was pull'd down?

Mr. Selby. Yes, I know it was pull'd down.

Mr. At. Gen. Did you see it?

Mr. Selby. No, I did not see it, I only heard say so.

Mr. At. Gen. Did you see the Prisoner at the Bar in that Company, in the Temple?—*Mr. Selby.* No.

Mr. At. Gen. When you overheard them, were they talking low, or loud?

Mr. Selby. It was loud.

Mr. At. Gen. How came you not to give Information of it to some Magistrate?

Mr. Selby. It was known before; they had broke the Windows the Night before.

Mr. At. Gen. Do you know any particular Person, that express'd himself for pulling down the Meeting-Houses?—*Mr. Selby.* No.

Mr. At. Gen. Who then did you hear say there was such a Design?

Mr. Selby. I heard several.

Mr. At. Gen. Then you don't know any one?—*Mr. Selby.* No.

Mr. At. Gen. Then you only express yourself, that you heard the Mob say so?

Mr. At. Gen. We don't call this Witness to speak in particular against the Prisoner, but to shew, that these People resolved among themselves, to pull down the Meeting-Houses.

L. C. J. You say you were passing through; You did not make any long Stay, did you?

Mr. Selby. No, my Lord.

L. C. J. Were they come to a Conclusion of the Discourse of pulling them down? Or did you leave them talking of it?

Mr. Selby. I left them talking of it.

Mr. At. Gen. He said there was an Intimation of it on Monday Night, I desire to know how he knew or heard of it?

Mr. Selby. You know the Windows were broke on Monday Night.

Mr. At. Gen. Did you see them?

Mr. Selby. No, but I heard so.

Mr. At. Gen. Who told you so?

Mr. Tally. It was a Man that lives in the House with me.
 Lord Chief Baron. What were they met about?
 Mr. Tally. They were the Mob that accompanied Dr. Sackville home to the Temple.

Then Captain Edward Orrel was fusile.

Mr. At. Gen. Pray look on the Prisoner at the Bar, and give an Account of all you know of this Riot, and how he was concerned in it.

Capt. Orrel. My Lord, I heard there were several Disturbances on Afternoon Night. On Tuesday Night I was at a Coffee-House, where there were several House-keepers. When I was there, there was News brought, that they had pulled down Mr. Burgoyne's Meeting-House.

Mr. At. Gen. Who?

Capt. Orrel. The Mob that came with Dr. Sackville. Pray, says I to Mr. Lonsdale, who keeps the Coffee-House, (he is one of that Congregation) pray step up and see the Truth of it, and whether you can do him any Service: You will find his Son, and, perhaps, he will put you into a Way to put a Stop to it. He went up to Mr. Burgoyne, and found that they had broke the Windows of his House, and Meeting-House; and after they had done that, they went off. From thence he went to Mr. Burgoyne's Son, and, I suppose, he went to the Secretary of State. On Wednesday I went to a Whistling-Hall, with some Neighbours, and went into Oliver's Coffee-House, where I find some time, and afterwards saw Mr. Maypole return through the Park to St. James's. There were several Papers dispersed about a Piece-Fighting; I thought they had been the common Papers that are dispersed about such Places, but I found it was about a Piece-Fighting, and I observed a little Man in the Pelvis very busy, pulling it down: I took particular Notice of him, but could not see him among the Prisoners that have been taken. I came out, and told my Friend, that it was all destroyed. We find a little while at the Corner of the Street, and then I went in again: I went in several Times, till some of them, that were pulling up the Boards, faces at me, and said, Damn him, What does that lazy Fellow do? And I believe, they took me for a Spy. I went again to the Coffee-House, and gave this Account to my Neighbours, and presently News was brought, that they were gone to several other Meetings. We went out again, and went round by Fetter-Lane.

I saw the Conflagration and the Watch were very much inflamed. I spoke to the Conflagration: He said, I with I could do any Service; but we have our Lives in their Hands; we dare not do any more, we have been so much abused. I went into Hallers, and saw the Fire lighted, and went round at a distance, and saw several Pieces of Timber thrown into it. From thence we went again to Lincoln's-Inn-Fields; there I heard some shuffling, Which was the Lord Wharton's House? Others said, St. James's: No, said others, the City, the City, the Bank: Damn them, says I, then, we will have all the Meeting-Houses down. We walked down to the Row where Sir Francis Chantrell's House is, and went towards my Lord Chancellor's House: I saw a Chariot standing at his Door; I said to my Friend, I believe there is somebody from Court, I hope there will be some Guards come down by and by. When I was there, I hallooed a little, and observed a small Body of the Mob detached from that Fire; they ran after one another, cross the Fields: I observed a pretty tall Man at the Head of them; I kept my Eye on that Party. In the middle of the Field they grew stronger, and then they divided themselves, some went towards the Arch, but none towards Peter's House: I went towards those at Peter's House, and there I saw Dammaree in the Queen's Livery, with his Badge; and there they held a Council of the Mob, as I called it. God damn it, says Dammaree, we will have them all down. Some went for going into White-street; Damn it, says another, that's a Hell-Road, the other it worth ten of it: Says Dammaree, I'll lead you on, Boys; Huzza! High-Church and Sackville! God damn them all, we will have them all down. Some of them turned off towards White-street, and others towards Peter's House. Dammaree, and the Mob with him, went through White-street, and came in ten or twelve Yards, he turned about, Huzza! Why don't you come on, Boys, to Drury-lane? God damn them, we will have them all down. I called to him, and said, How now, Dammaree! He turned about, Huzza! Come along, Boys; but he made me no Answer. In this Manner, he led them on from Lincoln's-Inn-Fields to Drury-lane, but I never saw him afterwards. By-and-by comes a little Fellow; I'll make way, says he (and, with a Pick-Axe, which he had in his Hand, endeavoured to break open the Meeting-House Door, and was working about it at the Bottom. Afterwards, while he was working at the Door, comes another Man, one Henry Sanders, about my Size, or a little higher, he had a Hatchet in his Hand: He comes up, and fears, God damn you, you break open a Meeting-House! You don't know how to do it; and, with the second or third Stroke, he broke through it. I stood close by him, laid my Hands upon him, and looked upon him, while he broke open the Door, and made the best Remarks I could of him: I have been one of the Prisoners, but could not find him among them; but, at last, was informed, that he was Apprentice to one Piddis, a Sawyer, in Parker's Lane.

Mr. At. Gen. It is no manner to give an Account of him: I ask, When they had broke open the Door, what did they do next?
 Capt. Orrel. I went into the Meeting-House with them, and stand, Where is Jolly, the Queen's Waterman? Says one, He is gone to the Back-Door: No, says another, he is gone to my Lord Wharton's. But I never saw Dammaree after that.

Mr. At. Gen. You say, he led them from the Fire at Lincoln's-Inn-Fields?

Capt. Orrel. I believed him first there, but did not know him, till they came near the Arch, and there they confused together, which way to go; and by that time they came to Drury-lane, I believe there were two or three Thousand of them.

Mr. At. Gen. At Drury-lane, you say, there was a Tumult of two or three Thousand; pray observe the Prisoner, and tell us, whether you are sure, that he is the Man that headed the Mob at the Arch in Lincoln's-Inn-Fields, and led them to Drury-lane?—Capt. Orrel. Yes, he is.

Mr. At. Gen. What happened afterwards? Did any Guards come? And was there any Opposition given to them? Or did they disperse themselves?

Capt. Orrel. My Lord, I was in Drury-lane half an Hour and more, My Friend had been some time in a House, and after we had heard all that Noise, Well, says I, I will go to my Neighbours at the Coffee-House, and acquaint them what has happened. As we were going into Lincoln's-Inn-Fields we met a Detachment of the Horse-Guards: I went up to the Captain; Sir, says I, this is the best Way, through the Arch, for there is a very great Mob: I run back along with them. As soon as they came, they halted at Great Square-Street. There came another Detachment of the Horse-Grenadiers, and met them, and both joined. After they had drawn themselves up in one Line, the Officer commanded them to ride among the Mob, and disperse them, which they did; but were very favourable, and struck them with the Flies of their Swords. After this, a Fellow drew his Sword, and got under a Bulk, I stepped up to him, and as soon as I came up, Sir, says I, What the Devil are you doing? I saw two or three Grenadiers strike him with the Flies of their Swords: He stood with his drawn Sword, and pricked at two or three Horses, so to as to do them any Harm.

Mr. At. Gen. Don't go into the Particulars relating to that Mob, but tell us, Did you for any other Tumult?

Capt. Orrel. I went down with the Grenadiers and Life-Guards to Black-Friars.

Mr. At. Gen. Was any Opposition given to the Guards at Drury-lane? Capt. Orrel. None by Dammaree, nor to the Horse-Guards, as I saw.

Mr. At. Gen. Was there any to the Grenadiers?

Capt. Orrel. There was Opposition; for I saw a Sword drawn, and the Officer alighted, and he swore, God damn them, he would fight the bait of them.

Mr. At. Gen. Do you know of any other Meeting-Houses that were pulled down that Night?

Capt. Orrel. I went to the Guards, and told them that I heard some of the Mob were gone into the City, (some said to the Bow; some said to Mr. Stour's), and others said to other Places. I went to them; Gentlemen, says I, is it better to have all the Meeting-Houses destroyed than the Bow, pray let us go thither: I went along with them down Hallers, and brought them up White-lane; there I heard they were not gone to the Bow, but that they were gone to Black-Friars: I showed them the Way, and went down with them almost to the Meeting-House, and showed them where it was.

Mr. At. Gen. Was that Meeting-House pulled down?
 Capt. Orrel. It was then pulling down, but it was prevented by the Guards.

Mr. At. Gen. Then you speak as to Mr. Burgoyne's, and the Meetings in Fetter-lane, Drury-lane, and Black-Friars?—Capt. Orrel. I was at them all. Mr. Whistler. Pray, What Time of Night was it that you saw Mr. Dammaree?

Capt. Orrel. I can't be positive, but I believe it was about half an Hour after Ten.

Mr. Whistler. Pray, In what Condition was he?

Capt. Orrel. I did not much observe it; I believe he had been drinking, he looked Ruffled.

Mr. Darnall. I think you say, you was in Mr. Burgoyne's Meeting-House, and saw several there pulling it down; Now, did you see Dammaree there?—Capt. Orrel. No.

Mr. Darnall. Did you see Dammaree, till you came to the Fire?

Capt. Orrel. No, nor at the Fire.

Mr. Darnall. Did you see him at the Meeting-House in Drury-lane?

Capt. Orrel. No, nor did I see him after he had brought up that Party through White-street: But I believe him to be the chief Person that led them from Lincoln's-Inn-Fields to Drury-lane.

Damm. When I was in Goal, you asked me, Whether I was the Waterman? Yes, I am, said I, Do you know me? If you are the Waterman, find you, I do.

L. C. J. If you have a mind to ask him any Questions, you may.

Damm. I desire to ask him, Whether he saw me in any of the Meeting-Houses?

Capt. Orrel. I said before, I did not. My Lord Sackville desired me to see the Prisoners in Newgate; I did so: When I came, they were in a dark Hole. I desired to speak with Dammaree and Parbury; and as soon as we went into a lighter Room, I knew them both.

Then Joseph Collier was sworn.

Mr. At. Gen. Do you know the Prisoner at the Bar? Tell us, whether you ever saw him before, and where?

J. Collier. My Lord, I saw him at the Fire, at Lincoln's-Inn-Fields.

Mr. At. Gen. What Time?—J. Col. About Eight or Nine o'Clock.

Mr. At. Gen. What Day?

J. Col. Wednesday, the Fifth of March last; I saw him being the Branch that holds the Candles.

Mr. At. Gen. Where had he it?—J. Col. In Dr. Burgoyne's Meeting.

Mr. At. Gen. What did he do with it?

J. Col. He went two or three Times round the Fire, and then threw it in.

Mr. At. Gen. What did he do besides?

J. Col. He hallooed, and threw up his Hat and Wig several Times.

Mr. At. Gen. Where did you see him first?

J. Col. In Lincoln's-Inn-Fields.

Mr. At. Gen. Did you go into the Meeting-House?—J. Col. No.

Mr. At. Geo. Where did you see him with the Branch?
J. C. J. Just at the End of the Alley.
Mr. At. Geo. Did you see him come out of the Meeting-House?
J. C. J. I do.
Mr. At. Geo. And you saw in his Hand the Branch?—*J. C. J.* Yes.
Mr. At. Geo. Where did he carry it?
J. C. J. He carried it to the Fire.
Mr. At. Geo. What did he do then?
J. C. J. He went about hallooing for Soldiers, and went round the Fire two or three Times, and then turn'd in.
Mr. At. Geo. What was that Fire made of?
J. C. J. It was made before I came.
Mr. At. Geo. How long was he there?
J. C. J. I believe two or three Hours.
Mr. At. Geo. When did he go away?—*J. C. J.* He went before the Guards, and led the Mob off to *Dum-Dum*.
Mr. At. Geo. How do you know he led them off?
J. C. J. He said, Let us go to *Dum-Dum*, and he went with them, and I saw them go to *Great Queen-Street*.
Mr. Thynne. What Sort of Cloaths had the Prisoner that Night?
J. C. J. His Workman's Coat and Badger.
Mr. At. Geo. Who appeared to be the most active Man at the Fire?
J. C. J. The Workman: he was the most active.
Mr. Thynne. Do you know of any Thing else forced by this Man, besides the Candlestick?—*J. C. J.* No.
Mr. Thynne. What Time of Night did you first see *Dum-Dum*?
J. C. J. I believe it was near Nine.
Mr. Thynne. Will you be positive it was about that Time?
J. C. J. It was about Nine, or Ten.
Mr. Thynne. Will you be positive it was before half an Hour after Ten?—*J. C. J.* I cannot be positive to half an Hour.
Mr. Thynne. Was any the Meeting-House pulled down before you saw *Dum-Dum*?—*J. C. J.* Yes, there was a Fire before.
Mr. Pitt-Rivers. What Time was that?—*J. C. J.* It was about Nine.
Mr. Thynne. If the Meeting-House was pulled down, did not they take out the Candlestick at first, before they pulled it down?
J. C. J. No, there was a great Fire before they brought it away: I was not there at the Beginning.
Mr. D. At. Geo. You say you came after the Fire was lighted, and there you saw *Dum-Dum*, but you did not go into the Meeting-House; how then can you say he was in the Meeting-House?
J. C. J. Because I stood at the End of the Alley, and saw him come out.
Mr. D. At. Geo. Why, were there any Lights there?
J. C. J. Yes; the Alley was very full of Lights, and the Meeting-House too.
Mr. At. Geo. I desire he may be asked, Whether he saw *Dum-Dum* bring that Branch out of the Meeting-House?
Mr. At. Geo. What did you see him bring out of the Meeting-House?
J. C. J. The Branch.
L. C. J. Could you see the Door of the Meeting-House where you stood?—*J. C. J.* Yes.
L. C. J. Did you see him bring that Branch out of the Meeting-House?
J. C. J. Yes; and I saw him throw it into the Fire.
Mr. D. At. Geo. Was you near the Door?—*J. C. J.* As near as I am to you.

Then John Still was sworn.

Mr. At. Geo. Look upon the Prisoner, and see if you know him.
J. Still. Yes, I do know him.
Mr. At. Geo. Where, and when did you see him?
J. Still. The Night that the Fire was, I saw him in the Alley, that leads to Mr. Burgin's Meeting-House.
Mr. At. Geo. Where was you?—*J. Still.* Just in the Alley.
Mr. At. Geo. Where was he going, or from whence was he coming?
J. Still. They were all standing and hallooing.
Mr. At. Geo. Did you see him do any thing more?—*J. Still.* No.
Mr. At. Geo. What time was it?
J. Still. It was as near as I can guess, about Eleven.
Mr. At. Geo. Was the Meeting-House down, or not?
J. Still. I cannot tell; there was such a Crowd, I could not get to it.
Mr. At. Geo. Was you at the Fire?
J. Still. Yes, but I did not see him there.
Mr. At. Geo. Did you hear him say any thing?
J. Still. Nothing, but only halloo.

Then John Mitchell was sworn.

Mr. At. Geo. Was you at the Fire in *Lincoln's-Inn-Fields* the first of March last?—*J. Mitchell.* Yes.
Mr. At. Geo. Do you know the Prisoner?—*J. Mitchell.* Yes.
Mr. At. Geo. Where did you see him?
J. Mitchell. I saw him that Night at the Fire.
Mr. At. Geo. What did he do there?
J. Mitchell. I only saw him run about the Fire, and halloo.
Mr. At. Geo. Where had they the Wood for that Fire?
J. Mitchell. From Dr. Burgin's Meeting-Place.
Mr. At. Geo. Did you see any Wood brought from thence?
J. Mitchell. No; it was all laid there before I saw it.
Mr. At. Geo. Was you at the Meeting-House?—*J. Mitchell.* No.
Mr. At. Geo. Was you there when he went from the Fire?
J. Mitchell. No.
Mr. At. Geo. What time was it that you saw him there?
J. Mitchell. About Eleven.
Mr. At. Geo. Pray, who appeared the most active Person there?
J. Mitchell. I don't know, they were all active.
Mr. Thynne. Did you hear him say any thing to the Mob?
J. Mitchell. No; only halloo.

L. C. J. Did they force him to halloo, as he said?
J. Mitchell. No; there was no forcing of him.
Mr. At. Geo. Did he act as a Man that was forced to halloo? or as one that did it willingly?
J. Mitchell. My Lord, he had no Occasion to halloo unless he would.
Mr. Thynne. What Time of Night was this?
J. Mitchell. About Eleven.
Mr. Thynne. Was you there when the Mob went away to *Dum-Dum*?—*J. Mitchell.* No.

Then Francis Morgan was sworn.

Mr. At. Geo. Pray look upon the Prisoner at the Bar, and tell us if you know him.
Mr. Morgan. My Lord, the first of March last, at about Ten in the Evening, I heard there was a Tumult in the City: I live in *Seaboard*, and I came over the Water, with another Person, so for what it was that occasioned it. I came to Dr. Burgin's Meeting-House, where I saw a great Number of Persons pull it down. After I had viewed them there 20-minutes, I went to *Lincoln's-Inn-Fields*, and I saw them make a Bonfire; and there I saw the Mob in the Queen's Livery, as a Waterman; he excited the Mob very much in their Proceedings, and I saw him pull off his Wig, and halloo, and seemed mightily to be rejoiced; I saw them with several other Persons, that had Sticks in their Hands. I did not see him have any, but he had his Wig in his Hand; he walked round the Fire with them, in Procession, with a Bedstead that was going to be thrown in.
Mr. At. Geo. You say it was ten o'Clock at Night when you came there?—*J. Morgan.* Yes.
Mr. At. Geo. Did you see *Dum-Dum* there when you first came?
J. Morgan. I did see him: I did not then know his Name; but that is all I saw.
Mr. At. Geo. Where had they the Materials for that Fire?
J. Morgan. I saw a great many bring Wood from the Meeting-House: I had to loose of them, Gentlemen, what are you doing? The Guards are coming. Said they, Damn the Guards, and the Parliament too; we are ready to face them all.
Mr. At. Geo. Why did they carry the Parliament?
J. Morgan. I don't know that.
Mr. At. Geo. Pray who seemed to be the most active Man, and Inciter of them?
J. Morgan. The principal Man I observed was the Prisoner at the Bar, whose Name I understand since to be *Dum-Dum*.
Mr. At. Geo. How long did you stay at the Fire?
J. Morgan. About half a quarter of an Hour, and then I heard them enquire, Where is the Fellow that fired the Guards, were coming; so I got away as fast I could, for I came over the Water in my Night-Gown.
Mr. At. Geo. Was *Lincoln's-Inn-Fields* the only Place you came to?
J. Morgan. I saw no other Fire; I came to the Meeting-Place first, and saw them pull it down, and then went to the Fire, which was very great, and I saw the Prisoner encourage them in bringing Things to throw in: I saw him walk round the Fire, and several about him with Sticks in their Hands; but as to him, I observed none in his Hand.
Mr. At. Geo. How many People do you think might be there at that Time?
J. Morgan. I believe two Thousand.
Dum-Dum. What Time of Night was this?
J. Morgan. About half an Hour after Ten, or Eleven.
Dum-Dum. Well, my Lord, I am very well satisfied.
Mr. Thynne. You say you saw a Procession before the Bedstead was thrown in? Did you see any Thing else that was thrown in?
J. Morgan. Yes, the Doors of the Meeting-House.
Mr. Thynne. Was there any Procession, or Hallooing before then?
J. Morgan. Yes, and I saw abundance of other Materials thrown in.
Mr. Thynne. Did they make the same Procession before all of them?
J. Morgan. No, not before all.
Dum-Dum. Did you see me throw any Thing in?—*J. Morgan.* No.
Thynne. Did you approach him to be drunk, or sober?
J. Morgan. I did not approach him to be disguised in Drink: I took him to be rather a Madman, than any thing else.
Thynne. Did you see him with any of the Mob, between the Meeting-House and the Fire?
J. Morgan. The Mob was so large, as to extend from the Meeting-House to the Fire; there were great Numbers running to and again, but I saw him at the Fire.

Then John Eaton was sworn.

Mr. At. Geo. Pray give an Account of what you know of this Occurrence, and of the Prisoner at the Bar.
John Eaton. I saw him at the Place where the Fire was.
Mr. At. Geo. Was you there at the making of the Fire?
J. Eaton. No.
Mr. At. Geo. What was the Fire made of?
J. Eaton. Of the Wood brought from the Meeting-House; I went to the Meeting-House with the Gentlemen that was up before.
Mr. At. Geo. What did you see brought out?
J. Eaton. I saw a great many People bring out Pieces of Board.
Mr. At. Geo. Did you see the Prisoner bring any thing out?
J. Eaton. No, I only saw him at the Fire.
Mr. At. Geo. How did he behave himself there?
J. Eaton. Hallooing, as the rest of the Mob did.
Mr. At. Geo. What Ceremony did they use to the Timber before they threw it in?
J. Eaton. They hallooed when they threw it in.
Mr. At. Geo. Did they walk round the Fire with any?
J. Eaton. Yes, with the Bedstead.

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Mr. At. Geo.

Mr. Ser. Geo. Who did appear to be the most alive?
J. Esau. There were many as alive as he; but he was very alive.
Mr. Ser. Geo. Pray what condition was he in; drunk or sober?
J. Esau. I am no Judge of that.
Mr. Ser. Geo. There can be nothing in that; no Weight can be laid upon it.
Mr. Ser. Geo. There is nothing in it; if any one kills a Man when he is drunk, he must be hanged when he is sober.
Damarce. I desire he may be asked what Time of Night it was.
J. Esau. It was about half an Hour after Ten.
Mr. Ser. Geo. Did you see any Soldier there?
J. Esau. Yes, one that looked like a Soldier.
Mr. Ser. Geo. What said he between them?
J. Esau. He, and some others, forced the Soldier to pull off his Hat.
Mr. Ser. Geo. Did you see Damarce with them that forced him to pull off his Hat?
J. Esau. Yes.
Mr. Ser. Geo. Did you say all he went away, or did you leave him there?
J. Esau. I left him there.
Mr. Young. Did you hear him say any thing to that Soldier?
J. Esau. I heard him say, Pull off your Hat.
Mr. Damarce. You say you saw several Persons bring out Materials: How many might there be?
J. Esau. I can't tell; but there were a great many.
Mr. Damarce. Did you see Damarce bring any thing out?
J. Esau. No.
Mr. Darnall. Where was he?
J. Esau. I saw him follow the Fire, and I left him there.
Mr. At. Geo. My Lord, there was a Question asked by the Counsel for the Prisoner, which we did not then oppose; but we must be an your Lordship's Judgment, whether it is a have any Regard to the Merits of this Cause. For admitting he was drunk to that Degree they would have by that is an excuse of his Crime, I don't find they clear that Matter up: But if it be so, it is an Excuse for Felony or Treason. The only Question is, Whether he was not assisting in this Tumult?
L. C. J. It is almost necessary, that when a Man goes upon such Actions, he should be in Drunk; and I don't know but a little more Drunk might have carried him to St. James's, where pulled out down.
Mr. At. Geo. My Lord, we have done with our Evidence for the Queen.
Mr. Whistler. May I please your Lordship, and Gentlemen of the Jury, I am of Counsel for the Defendant: The Defendant stands in need of twenty four Crimes; it is Treason, and levying War against the Queen, under whose Government we are the happy People in the World. And I agree with the Gentlemen that are of Counsel with her Majesty, that a Prosecution of this Nature is very necessary, if their tumultuous Actions amount to levying War; and that no Tumulture is to be borne. But the Question is, What Shew the Prisoner had in this Tumult? I agree these Tumults are not to be endured in any Civil Society, nor will any body, I believe, say, that those Methods are to be taken with, or any Injuries whatever to be used to, no Defendants. The Law is their Protection as much as of any other Subjects of this Kingdom: Ill Ways of Force and Violence towards the Defendants are unjustifiable, and their Ways are unreasonable; and no such evil and base Methods are to be used towards them. But that which we insist on, is, that the Prisoner had no Share or Guilt in the Actions, and if so, then there will be no Colour to say, that he is guilty of a Riot, much less of levying War.
 I beg leave just to state what has been sworn against him, and then apply myself to give an Answer. The first Witness was only to prove that there was a Design, and that the Witness heard a Rumour among a great many People in the Temple, to pull down the Meeting-House of Mr. Bury's; but he did not say for Damarce there, nor is it proved that Mr. Damarce was any way privy thereto: And we shall shew that he was innocent of any such Design. The next Witness is *Gerril*: He speaks directly to the Prisoner at the Bar; but I will observe that he does not speak to him till half an Hour after Ten, when he said him in *Leicester-Fields*, at the Fire of the Materials of Mr. Bury's Meeting-House: Indeed he does speak as to his having some Share in the Destroying of the Mob; but we shall shew that he was not a voluntary Agent as that Matter; and if so, that will sufficiently account for, and thereby we shall answer the Evidence given by him. The next is *Gilber*: We will shew him to be under a great Mistake, and that it is impossible that what he swears can be true: He confines himself to about Nine o'Clock, when this Action of carrying out the Search, and throwing it into the Fire with such a formal Prosecution was. We shall shew where the Defendant was till half an Hour after Ten; and that it is impossible for him to have the least Hand in planting or demolishing the Meeting-House. And if that be answered, we think it will go a great way towards clearing him of this Charge. The other Witnesses only speak to his being among the Rabble, hallooing amongst them: If we give an Account how the Prisoner came to be there, and that he was under a Necessity to do as he did, and that it was a perfect Accident, we hope the Imputation of any Crime for his being an Actor in this Matter, especially Treason, will not be laid to his Charge.
 The Prisoner's Case was this: On *Wednesday* Morning he had occasion to apply to the Officers of the *Blue-Guards* for a young Fellow that he had a mind to have for his Apprentice: He was with the *Beetles* from Ten in the Morning till about Two o'Clock, and indeed he might have been employed his Time, for they were all that while at an Alehouse drinking. After that, he falls into Company with one *Wood*, with whom he continued at another Alehouse, till about Ten o'Clock at Night. As they were drinking, there came a Report that there was a Fire in the Strand. The Officers and the rest of the Company were surprised, and got up, says the Prisoner, There is a Lady I serve with Coals, that lives

in the Strand, I must go and take my things: He comes out of *Wood*'s, leaves *Wood* alone, and there he was surprised, and bound, and taken into their Force, and finding there was no Fire in the Strand, he was going to a house, he thought the Strand was a miserable poor Place; he was going there, and therefore chose to go the back way. His Companion, *Man Wood*, went with him; but he being as a civil Condition that *Wood* never, he got out of the Mob. But we shall prove that this Mob was under a Force, and by force of the Mob dragged into the Mob at *Wood*: And you observe the Witnesses against the Prisoner, that they heard every Body say to the Mob that did it a join with them, and that they said the Power of these idle People, and such other such, and that they can say he was a Criminal. And there is no Power to say, that this Mob was over night, or at any time before, in any *Leicester-Fields*, or any other place, the tumultuous Night before, but by your Lordship's leave as among them at Night, on the first of May. If we did not know this, we should think the Court and the Jury will not believe that he was not a criminal Actor in this Cause.
 If the Defendant should be so unfortunate to be taken up as a criminal Actor, yet we hope the Fact will not amount to more than a Riot, and not to levying War, nor to High-Treason. I shall not take up your Lordship's Time at present in speaking to that Point, but we have called our Witnesses, when we see how the Matter stands. If any Gentleman should appear against him, or the Fact be doubtful whether he was a willing Agent in these Irregularities or no, the Question will then be proper, Whether it amounts to levying War, or not? We will call our Witnesses, and hope that about Point shall be referred to us.
Mr. Darnall. My Lord, I beg a few Words on the first of May. A civil Indictment charges the Prisoner with levying War, then will be a Charge of Fact such as amount to a levying War. The Witnesses for the Queen have sworn, that the Prisoner was at the Fire in *Leicester-Fields*, and that he then did halloo and shout up his Hat. I have that must be agreed, for my Indictments are that he did so, and our Witnesses will all say so much. But if that were all, then the Witnesses against the Prisoner must be equally Guilty. For the Chief of them, *Gerril*, says, he was forced to pull off his Hat, and it was known to him the Prisoner of the Mob that Night, to make all that passed by say Obedience, as he, called it, to Dr. *Johnson*, and High Church. My Lord, that which I barely say on behalf of the Prisoner, is, that unless he were in the front of pulling down the Meeting-House in general, and doing something as Execution of that general Intention, it will not be a levying of War against her Majesty. My Lord, it is observed that this Man was at the Fire in his Coat and Budge, and we think a great deal may be inferred from his Habit, that he was not in to do an Intention, or levying War against her Majesty, which *Stratton* he was so remarkably distinguished to say; but a Man who had such a vile Design to execute, would dress himself in such a manner as would best conceal him: Therefore we think his being armed at the Fire, and hallooing, and the rest of the Evidence against him, is not enough to prove him in that general Intention, and the Execution of it.
 The Gentlemen of the other Side thought it necessary to give some Evidence of a Design to pull down the Meeting-Houses in general; and for that purpose proved that a great Number of People were got together the Night before in the Temple-Works, where there was a Discourse by some of them, that they would pull down Mr. Bury's Meeting-House, but who these People were, I don't know, nor do they by my Means bring that home to the Prisoner. And it is impossible for us to give an Answer to that Evidence, for to say the Mob did so, is to say that Nobody did so; and no Witness can be relied on for an Evidence, for who that Mob were is not explained. And, my Lord, if there were no Intention, or no general Intention to pull down Meeting-Houses, we apprehend there can be no levying of War: If the Fact were sudden and accidental, or only intended against a particular Meeting-House, we must submit that to your Lordship, whether if he were Guilty of that Fact, it would amount to High-Treason? We think all the Cases on this Foundation, that there must be an Intention to commit such Offence in general; and an Intention to commit it to the particular Injury of a Person, or Place, will not be sufficient. The Witnesses against the Prisoner say, there was an Intention, or Discourse of going to Mr. Bury's Meeting-House, and no Talk of any other; but when they were there, then they went to a second, and on to a third: But the original Intention by the Mob, doth not appear to be more than to go to Mr. Bury's Meeting-House, and to pull that down, and therefore is not a levying of War.
 The Case in Point, in the second *Assize*, 66. where the People in *Osney* were sent to assemble together, and move others to join them, and to pull down Inclosures, was decided with this Circumstance, that it was a general Intention, and when they were got together themselves, they persuaded others to join with them, they conspired to go on several Gentlemen's Houses, and to take Arms and Horses, and to kill several Gentlemen, and then to come to *London*; and their Intent was general, not to pull down any particular Inclosure, but all of them, for the Enlargement of Highways and Commons, and so to reform that which the Law ought to do.
 So in the same Book, in the Case of the Apprentices of *London*, 3 *Assize*, 4. 5. For reducing the Price of *Fish* in general, they agreed to break open the Prison, to release some of their Companions, and to go to the Lord-Mayor's House, and to kill him, and burn his House, and then to break open two other Houses near the Tower, where there were Arms for several hundred Persons: Then to *Gilbert* Liberty, and to purchase other People to join with them.
 There is a later Case in my Lord Chief Justice *Kings*'s Reports, which was the Intention of pulling down *Bury's* Meeting-House; there they took upon themselves Regal Authority, and would not take the Oath the Law prescribed; but, my Lord, those Cases are attended with many worse Circumstances than this is, for there they assembled with Arms, there they had one they called *Coyne* to lead them, with his sword drawn,

Mr. Darnell. Did you stop any where?

Wind. No where, Sir, I went on. He was at *Temple-Bar*, making way to the Gentlewoman, and the Crowd forced him up *Sherr-Lane*, into *Lincoln's-Inn-Fields*; and when they saw his Badges, they said, *Damn ye, you are the Queen's Waterman, you shall go with us.*

Mr. Whistler. Give an Account of what passed when he was there.

Wind. I saw him stand against the dead Wall, and they took hold of him, and said, *Damn ye, you are the Queen's Waterman, you shall go with us, or we will tear you in Pieces.*

Mr. Whistler. Did he go willingly? Or what did he say?

Wind. He said, God bless the Queen, Gentlemen, I'll do any Thing you would have me, don't knock me on the Head.

Mr. Whistler. Whereabout was this?

Wind. It was, I think, just by the Street they call *Dale-Street*.

Mr. At. Gen. You say you were with him all this while, and came along with him, and at *Dale-Street*, you say—

Wind. At *Dale-Street*, I think they call it, as you go to *Tavern-Side*, just at the Wicket, as you go through *Lincoln's-Inn*.

Mr. At. Gen. Where did they lay hold of him?

Wind. Just at *Lincoln's-Inn-Gate*.

Mr. At. Gen. But I thought he had been pulled by the Mob at *Temple-Bar*?

Wind. We were going to the Gentlewoman's House.

Mr. At. Gen. Why, I thought he lived in the Street; Was *Lincoln's-Inn-Fields* the Way to the Street?

Wind. The Multitude of People forced him from *Fleet-Street* up *Sherr-Lane*.

Mr. At. Gen. Where did you meet them at first?

Wind. He was going through *Temple-Bar* to the Street, and they said, Here is the Fire; so we turned up the Lane: There was no passing thro' to the Street, there was such a Crowd.

Mr. At. Gen. But you found no Crowd afterwards, I suppose. Was the Press so great at *Temple-Bar* that you was forced up *Sherr-Lane*?

Wind. Yes.

Mr. At. Gen. You did not touch the Ground all the while, did you?

Wind. I saw them force him all the Time.

Mr. At. Gen. Did they force you too?

Wind. No, I went alone.

Mr. At. Gen. Was you forced up from *Temple-Bar* to *Lincoln's-Inn-Gate*?

Wind. Forced? No, Sir.

Mr. At. Gen. Why, he is an big a Man as you, how came they to force him, and not you?

Wind. He was taken hold of by the Mob in *Dale-Street*.

Mr. At. Gen. Now you say, the first Time he was touched by them was at *Dale-Street*; can you say you was forced from *Temple-Bar* to *Lincoln's-Inn-Fields*?

Wind. Yes, we were forced by Violence.

Mr. At. Gen. Was you forced for one?

Wind. Yes, we were forced among the Crowd of People.

Mr. Justice Tracy. You say you were carried in the Crowd from *Temple-Bar*; how far was you carried?

Wind. To *Dale-Street*.

Mr. Justice Tracy. Where is *Dale-Street*?

Wind. It is behind *Lincoln's-Inn*; as you go through a little Wicket; it is where the Shopkeepers are.

Mr. At. Gen. Where is this which you call *Dale-Street*?

Wind. I am not well acquainted with the Streets.

Mr. At. Gen. How came you then to call it *Dale-Street*?

Wind. They tell me it is called so: It is a narrow Street, just behind *Lincoln's-Inn*. When you come through the Wicket, you must turn of the Right Hand up to *Tavern-Side*.

L. C. J. You say you went to *Temple-Bar* to go into the Street, and then you met a great a Press, that you could not go through. Where did you go then?

Wind. I went up *Sherr-Lane*.

L. C. J. Did the Crowd force you up?—*Wind.* Yes.

L. C. J. Did all that Crowd that you met at *Temple-Bar* go up *Sherr-Lane*?

Wind. Some went one Way, and some another.

L. C. J. Which Side of *Fleet-Street* was you when you went to *Temple-Bar*?

Wind. On the Side next the Temple.

L. C. J. Then how came you to cross the Street, when there was such a Crowd you could not get along?

Wind. They forced us along.

L. C. J. I ask you, if there was such a Crowd, that you could not get through, how could you go cross the Street to *Sherr-Lane*?

Wind. They all went that way.

L. C. J. Then you say, that all that Crowd that filled up the Street, so as to hinder your passing into the Street, were all received into *Sherr-Lane*: When you was got up into *Sherr-Lane*, where did the Crowd carry you then?

Wind. Into *Lincoln's-Inn*.

L. C. J. When you was in the Square, Where did you go then? Did he Crowd carry you through the Wicket?

Wind. They forced as hard as ever they could force.

L. C. J. Then you say, when you was in the open Square, you could not avoid being carried by the Crowd through the Wicket. Consider what you say, you are on your Oath. How could you, when you was in the Square, be forced by the Crowd through the Wicket? In the next Place, Where did you get out from the Crowd, when you was got thro' the Wicket? How did you get from the Crowd?

Wind. I came down *Lincoln's-Inn*, into *Sherr-Lane*; there is a way that goes backw'ards, behind the Houses: I went away, and left them all.

L. C. J. When you left them, where was *Dammaree*?

Wind. They forced him to the Fire.

L. C. J. Where did they lay hold of him?

Wind. It was at the dead Wall at *Dale-Street*.

L. C. J. Is that between the Wicket and the Fields?

Wind. Yes, it is opposite to the Wicket.

L. C. J. I ask, Was it between the Wicket and the Fields?

Wind. Yes, it was.

L. C. J. I thought you had not gone at all of the Right Hand towards the Fields, but that you crossed down towards *Sherr-Lane*.

Wind. No, there was no getting that Way; I went down into *Chancery-Lane*.

L. C. J. Now tell me, Which Way did you get into *Chancery-Lane*, if you were at the Backside of *Lincoln's-Inn*, and did not go into the Fields? Is not the other Way the Way to *Sherr-Lane*?

Mr. At. Gen. How could you get into *Chancery-Lane*, without going by *Sherr-Lane*, or into *Holborn*?

Wind. I went the Backway.

Mr. At. Gen. Then tell us which Way did you go.

Wind. I turned on the Left-hand.

Mr. At. Gen. Where was you standing when you turned?

Wind. Just at the Wicket.

Mr. At. Gen. Did you go no further?—*Wind.* No, no further.

Mr. At. Gen. Then how could you see the Mob lay hold of him at the dead Wall? Pray tell us where, and in what Manner you got from the Mob as you go home?

Wind. I came down into *Fleet-Street*.

Mr. At. Gen. Where did you come into *Fleet-Street*?

Wind. Just against the lower *Temple-Gate*.

Mr. At. Gen. Which do you call the lower *Temple-Gate*, that next to the Bar, or the other?

Wind. I mean that next to *Fleet-Bridge*.

L. C. J. At that Time might not *Dammaree* and you have gone away into *Chancery-Lane*, or where you would?

Wind. No, they took hold of him.

L. C. J. If they seized him in that place, whether did they take him? what did they do with him?

Wind. They took hold of him, and pulled him, and hauled and forced him by Violence.

L. C. J. Well, did you see him afterwards? Did he not go along with you?

Wind. No, when I saw they laid hold on him, I left him.

L. C. J. Then you saw nothing of what passed in the Fields?

Wind. No, nothing of that.

L. C. J. Now you have been telling us that it was a Quarter after Ten when you parted from the Mob, in *Chancery-Lane*; how came you to be so exact as to the Time? How could you, that had been drinking twelve Hours, be able to tell to a Quarter of an Hour what Time it was?

Wind. What say you to it?—*No Answer.*

Mr. Whistler. Do you know the Names of the Streets about *Lincoln's-Inn*?

Wind. I know the Street again.

L. C. J. He has described the Streets sufficiently; no Advantage will be taken of his mistaking the Name.

L. C. Baron. You speak of some that took hold of him; whereabouts was that?

Wind. At *Dale-Street*, behind *Lincoln's-Inn* Wicket.

L. C. Baron. You said, as soon as they laid Hands on him, you left him. Was it so or not?—*Wind.* Yes.

L. C. Baron. Then you say so more; you saw no more what was done by him, or with him, after that?—*No Answer.*

Then Fardell rose, & swore.

Mr. Whistler. Did you see *Dammaree* on the first of *March* last?

Wind. I kept the Bell Alarum in *Water-Lane*; he came to my House about Two, and said there till half an Hour after Ten.

Mr. Whistler. Are you sure of that?—*Fardell.* I am sure of it.

L. C. J. Was he full of Drink then?—*Fardell.* Yes, full of Drink.

Mr. Darnell. Do you remember that any gave an Account of a Fire on the first of *March*?

Fardell. I knew nothing of that.

Mr. Darnell. Do you know on what Occasion he went away?

Fardell. He went on no Occasion that I know of, but being in Drink.

Mr. Darnell. Did you hear any Thing of a Fire?—*Fardell.* Nothing.

Mr. At. Gen. Where do you live?

Fardell. At the Bell, in *Water-Lane*.

Mr. At. Gen. What Countryman are you?—*Fardell.* A German.

Mr. At. Gen. Did you take any Account when he went away?

Fardell. Yes, about half an Hour after Ten.

Mr. At. Gen. How came you to take particular Notice of the Time? *Fardell.* I can't tell how it came.

Mr. At. Gen. Did nobody come in and tell of a Fire?

Fardell. I heard nothing of it.

Then Charles Bishop rose, & sworn.

Mr. Whistler. Was you with *Dammaree* the first of *March* last?

C. Bishop. Yes.

Mr. Whistler. How long did you stay with him?

C. Bishop. 'Till half an Hour after Ten.

Mr. Whistler. Did any body bring any Account of a Fire?

C. Bishop. Yes, our Poilition.

Mr. Whistler. What was done then?

C. Bishop. We laid an Hour after that.

Mr. Darnell. When was it that they brought the News of the Fire?

C. Bishop. It was half an Hour after Eight, or Nine.

Mr. Darnell. Pray give an Account what passed after?

C. Bishop. We had a Pound of Snuff, and smoked a Pipe.

Mr. Whistler. When he went away, on what Occasion did he say he would go?

C. Bishop. He said nothing of the Fire, but parted from me, and was much in Drink.

Mr. Darnell. How long did he stay after the Talk of the Fire?

C. Bishop. About an Hour.

Mr. Darnell. Did you leave him there, or did he leave you?

C. Bishop. He left me; I find a while after, and I saw him afterwards in *Fleet-Street* talking with a Woman.

Mr. Darnell. Whereabout was that?

C. Bishop. Just by the Green-Dragon Tavern.

Mr. Darnell. Did you speak with them there?

C. Bishop. No; he was so much in Drink, that I did not care to speak with him.

Mr. Justice Tracy. Was *Wind* with him then?

C. Bishop. No; I did not see him.

L. C. J. Did *Wind* go with him from you?

C. Bishop. Yes.

L. C. J. Do you remember that when the News was brought, he said that was a Gentlewoman in the Street that he must take Care of?
C. B. J. No. I do not remember it.
Mr. Dawd. Our Interest in calling this Witness, is to show that he was at that House half an Hour after Ten.
L. C. J. He says, the News was brought at half an Hour after Eight or Nine, and that they parted half an Hour after Ten; and when he is asked how long they staid after the News, he says, about an Hour.
L. C. B. J. How long did you staid after the News of the Fire?
C. B. J. I can't exactly say, but we staid 'till half an Hour after Ten.
L. C. B. J. When you saw him at the Tavern Door, was it half an Hour after Ten?
L. C. B. J. No.
L. C. B. J. Pray, what time was it you saw him there?
C. B. J. It was about three Quarters after Ten.

Then John Light was sworn.

Mr. Whistler. Was you at the Bell Alleyhouse the Fifth of March last, or thereabouts?
J. Light. Yes, I was there.
Mr. Whistler. At what time of Night?
J. Light. Between Eight and Nine o'Clock.
Mr. Whistler. What Accus'd did you bring of a Fire?
J. Light. I brought in the News.
Mr. Whistler. How long did you tarry with him after that?
J. Light. I did not tarry at all, I came on for a Pint of Drink, and went away.
Mr. Whistler. Was you not in his Company after that?
J. Light. I came into the House before they went away.
Mr. Whistler. What time of Night was it when you came in the second time?
J. Light. About Ten o'Clock.
Mr. Whistler. How long did they stay after that?
J. Light. 'Till between Ten and Eleven.

Then Wm. W. was sworn.

Mr. Whistler. Did you see *Dumaine* the Fifth of March, at Night?
Wm. W. Yes.
Mr. Whistler. What time of Night was it?
Wm. W. Half an Hour after Ten.
Mr. Whistler. Where did you see him?
Wm. W. I left him at this Gentleman's Shop.
Mr. Whistler. Where does the *Witness* live?
Wm. W. In *Plot Street*.
Mr. Whistler. In what Condition was he when you saw him there?
Wm. W. He was drunk.
Mr. Whistler. Did you see him do any thing indecent?
Wm. W. Yes, he walked about, and asked what the matter? We told him there was a Difference; he says he, I hear there is a Fire.
Mr. Whistler. What did he do after that?
Wm. W. I left him there.
Mr. Whistler. Was any body with him?
Wm. W. No, none but himself.
Mr. Dawd. How long before the Fire burn?
Wm. W. A long time, I think there were forty People had come and said, that all the Inside of the Meeting was burnt.
Mr. Dawd. How long before that?
Wm. W. I believe it might be an Hour before, about Eight o'Clock: I was going into the City, I saw a great many People, and they had the two Inns that were up the Top of the Pulpit: What is the Matter, said I? Why, say they, shole Men have the Bars that kept up the Top of *Mr. Burgoyne's* Pulpit; and I knew them to be shole Bars, for I have seen them often.
Mr. Dawd. Where was it that you saw them?
Wm. W. It was at St. *Basil's* Church.
Mr. Dawd. You say the Fire had been an Hour before you saw him in *Plot Street*?
Wm. W. Yes.
L. C. B. J. Who told you they were the Bars?
Wm. W. The People that knock'd after them.

Then Mr. Giles was sworn.

Mr. Whistler. Do you remember the Night that this Difference was, that you saw *Mr. Dumaine* from *Mrs. Giles*? I saw him, I believe, about a Quarter after Ten; he stood and talked with me.
Mr. Whistler. How long did he stay?
Mrs. Giles. Above a Quarter of an Hour.
Mr. Whistler. How do you know it was that time?
Mrs. Giles. After he was gone, I did but lock up my Door, and go up Stairs, and it struck Eleven.
Mr. Whistler. What Condition was he in?
Mrs. Giles. Very drunk.
Mr. Whistler. How long had the Fire been before that?
Mrs. Giles. A long time, four Hours: The People that went along, said, they had burnt the Inside of the Meeting. About Eight o'Clock they were burning it, and about Ten o'Clock they said it was all burnt.
Mr. Just. Tray. Did you hear him talk of any Fire at a Friend's House in the Street?
Mrs. Giles. He had nothing of that, but asked me if there was not a Fire: I told there was a Fire at *Leach's* *See-Field*.
Mr. Just. Tray. Was any body with him?
Mrs. Giles. No body but himself.
Mr. Just. Tray. Was you acquainted with him?
Mrs. Giles. I never saw him before, that I know.
Mr. Just. Tray. Then you was an utter Stranger to him? How came he to be talking with you?
Mrs. Giles. I was standing at the Door with four others, and he came to us.
Mr. Just. Tray. Did he come to you on any Business?
Mrs. Giles. He came as he was walking along, and asked me, What was the matter?
Mr. Just. Tray. Had not you been asked that Question by a great many times?
Mrs. Giles. By a great many.
Mr. Just. Tray. Do you remember who asked you the Question before he came to you?
Mrs. Giles. No.
Mr. Just. Tray. Then how came you to take more Notice of him than of others that asked the same Question?

Mrs. Giles. Because he stood a great while, and talked, and had the Queen's Coat on: He was very satisfied, and stood and talked with me, and that made me take notice of him.
Mr. Just. Tray. How came you to be subpoena'd?
Mrs. Giles. Because I had said to several Gentlewomen, that there was such an one taken up, they said he was pulling down the Meeting-house: I said it was impossible, for that he was with me at that time, and came from the City-wards, and that made me inquire into it.
Mr. Just. Tray. Then you was sent to him, was you?
Mrs. Giles. No; I did not go, but a Gentlewoman in *Leach's* *See-Field*, one *Mrs. Plowden*, I know nothing of him; but because I thought on could not see the Man, I was willing to clear him if I could.
Mr. Whistler. How long have you in all whilst you now do?
Mrs. Giles. I have lived there twenty Years.
Mr. Just. Tray. What did you talk about? He could not be a Quarter of an Hour asking that Question.
Mrs. Giles. No; but a great many came by, and asked, Who are you for? and what are you? And he said, You may for me who I am for; I am for the Queen.
Mr. Just. Tray. How did he not talk with you so long?
Mrs. Giles. I was at the Door all the time, and he talked with me and others.
Dawd. I desire to ask her, whether I told any thing of a *Nark-Child*?
Mrs. Giles. He said he had nursed my Lord *Mayor's* Children.
Mr. Just. Tray. What else did you talk of?
Mrs. Giles. I advised him to go home; and I turn'd about and went in, and he said, Good Night, *My* *Mistress*.
L. C. B. J. Did he talk freely?
Mrs. Giles. He talked as if he was drunk.
L. C. B. J. He gave an Account you say of nursing Children: How came that?
Mrs. Giles. I told him, I wished my Lord *Mayor* would send out the Guards to pull the Mob: Say he, I nursed his Children; that was the Reason of it.
Mr. Dawd. Did he say any thing of any other *Nark-Children*?
Mrs. Giles. Yes, he said he nursed for *Richard* *Heard's*, Did you nurse them, said I? Yes, says he, we did at home.
Mr. Just. Tray. Are you sure that is the Man?
Mrs. Giles. Yes; for I went to *Amoy* to see him.
Mr. Whistler. How came you to remember the Time so exactly?
Mrs. Giles. Because I had stood at the Door so long, and heard several go by, and say, I was at home.
Mr. Whistler. How near do you live from St. *Dunston's* Church?
Mrs. Giles. Just over against it.
Mr. Whistler. Will you now call some Witnesses, to show that he was under Force and Constraint.

Then Mr. Cammies was sworn.

Mr. Dawd. Do you remember that you saw *Dumaine* the Night that this Difference was at the Meeting-house?
Cammies. My Lord, I don't know the Man; but I did see a Man with the Queen's Coat and Badge; I keep a Shop in *Leach's* *See-Field*, and a House in *Targate*: I being robbed there some time before, I went between the two Shops to see they did me no harm: I sent my Servant to bed, and going to see if he was there, I did not find him; but going back again by the Fire, the Mob cry'd, *Huzza, Seize him*. I thinking of the Day, did I intend to pull off my Hat, and they struck me over my Head, and then I was forced to believe as they did. I met my Boy presently, and sent him to bed: I went away immediately, and by the Fire I saw that Man, and some People had him by the Shoulders, and thrust him about, some out way, and some another: Sometimes he was at a distance from the Fire, and sometimes very near it; but he seemed as if he could not stand.
Mr. Dawd. What time of Night was this?
Cammies. As near as I can guess, it was about Eleven o'Clock.
Mr. Dawd. Did you see the Mob lay Hands on him?
Cammies. I saw them pull him from Hand to Hand, and I could compare him to nothing but a Dog as a Ring, they pulled him up and down; but I don't know the Man, but only by the Coat.
Mr. Dawd. Do you take it the Mob made themselves merry with him, or that he asked them?
Cammies. I can't be a Judge of that Matter.
Mr. Just. Tray. What time did you shut up your Shop?
Cammies. That is up, as near as I can guess, at Seven o'Clock, because there was a great Mob: My next Neighbour would not keep open any longer; so we shut up our shops.
Mr. Just. Tray. What time did you find your Servant to bed?
Cammies. I sent him out about three Quarters after Ten, or more, and I run down after him.
Mr. Just. Tray. How long was it after you sent him away, that you went to look after him?
Cammies. I went presently after him; I got to the Shop before him.
Mr. Just. Tray. Were not other People pushed about besides him?
Cammies. I saw nobody; I asked about him him that had the Queen's Coat on; I did not say, but made all the haste I could away.
L. C. J. Are you sure the Prisoner is the Man you speak of?
Cammies. No.
L. C. J. Do you believe it is he?
Cammies. I can't tell; I can't take upon me to say, for it was a Man with the Queen's Coat on.
L. C. J. Whereabout did you see him?
Cammies. I was coming up the dead Wall under *Leach's* *See-Field* Garden to see for my Servant, and at the lower End, just by the Shops, there was a great Number of People made a Ring, like that where they play at *Card-games*: He was in the middle of them, and they shov'd him about sometimes to another. I met immediately with my Boy, and I took him a Box on the Ear.
L. C. J. I only want to know the Place where you saw him.
Cammies. In *Leach's* *See-Field*, within the Rails, under *Leach's* *See-Field* Garden, towards *Paragon-Road*, I believe it might be seven or eight Yards within the Rails.

H h

Dawd.

Mr. M. Lark. The Shirt which I have on now, was torn by them.
Mrs. Mary Reading was *Joane*.

Mr. M. Lark. Was you near this Fire?
Mr. M. Lark. I heard there was a great Fire, so I went out, and I saw one of our Neighbours; says he, Where is your wife? I said it was in *Lucas's-lane-Field*; at that, says he, you see her was here just now, I with he is not gone to it. She asked me so relating with her, we went into *Lucas's-lane-Field*, and saw the Fire. As we stood there, I saw a Sconce brought, and thrown into the Fire. I saw a little short Man, a black Man, in black Hair, carry the Sconce round the Fire three times.

Mr. Whitaker. What Dress was he in?
Mr. Reading. I could not see what Dress; I saw he was in Waterman's Cloaths, but I could not see the Colour, but that it was not the Man.

Mr. Darnell. Is that the Man?
Mr. Reading. Nay, he was a little short Man in his own Hair.
Mr. Darnell. Was there any more than one Sconce thrown in?
Mr. Reading. I saw no more.

L. C. J. You could not say what Colour his Cloaths were; and can you say that that was not the Man?—*Mr. Reading.* Yes.

Mr. Darnell. Did you see any thing more?
Mr. Reading. When I came away, the Fire was pretty well burnt, and coming along, we met with a Waterman, says the Woman that was with me, Lord bless me! How is one of the Queen's Watermen. What have you to say to the Queen's Waterman? says he: Nothing, said he; but God bless the Queen, and her Watermen too. Says he, You are a little Girl, and I will tell you.

L. C. J. Whereabouts did you meet that Waterman?
Mr. Reading. As we were going from the Fire, we met him going up to it, and this is the Man that we met going towards the Fire when we came from it.

L. C. J. Was that before or after the burning the Sconce?
Mr. Reading. It was afterwards.

L. C. J. How long was it after?
Mr. Reading. I can safely take my Oath, it was Half an Hour.

L. C. J. Was any thing thrown into the Fire after that Man came?
Mr. Reading. I never went thither after it.

Mr. At. Gen. Where was you?
Mr. Reading. In *St. Andrew's Street*, near the *Seven Dials*.

Mr. At. Gen. Did you ever see him before?—*Mr. Reading.* Never before.
L. C. J. Where was you going when you met him?
Mr. Reading. I was going homewards, towards *Great Queen-Street*, and I was coming towards the Fire.

L. C. J. Was there at that time any Fire in *Drury-Lane*?
Mr. Reading. They were pulling down the Meeting-House in *Drury-Lane*.

L. C. J. Then you met him coming from *Queen-Street*, a little time after that they began to pull down the House in *Drury-Lane*; and about half an Hour after the Sconce was thrown into the Fire in *Lucas's-lane-Field*?—*Mr. Reading.* Yes, it was.

L. C. J. Where did you see that he was in Drink?
Mr. Reading. I believe he was; for the Woman he killed said, he smelt strong of Liquor.

Mr. At. Gen. How long was this after the Sconce was thrown in?
Mr. Reading. It was about half an Hour; I believe rather more than less.

Mr. Whitaker. Was you at the Fire in *Lucas's-lane-Field* the first of *March* last, at Night?—*Mr. Reading.* Yes.

Mr. Whitaker. Do you remember who it was that carried the Sconce?
L. C. J. Sir, I went to the Fire, because I have a Brother lives by there, and was afraid that he might come to some Damage. As I was going, there was a vast Crowd, and a great Ring, and in that Ring, as I could see between them, I saw a little Man with black Hair, very short; he carried the Sconce three times round the Fire, and then threw it in.

Mr. Whitaker. What Sort of Man do you say he was?
L. C. J. Sir, He was a black Man, a short Man with his own Hair.

Mr. Whitaker. Is that he?—*L. C. J.* Sir, No.
Mr. Whitaker. Was he in a Waterman's Habit?
L. C. J. Sir, Yes; but I can't say he had a Badge.

L. C. J. Was you with the last Witness?—*L. C. J.* Sir, Yes.
L. C. J. How near was you to the Fire when you saw him carry it round?

L. C. J. Sir, As near as I could get for the Crowd, I believe as near as that Place. [Pointing to the other Side the Court.] I could not go any nearer, for the Fire was vally hot.

L. C. J. Was there any Crowd there?
L. C. J. Sir, Yes, a great one; but I was of the Outside of the Ring.

L. C. J. Then if he was a little Man, and you are so tall Woman, and you were of the Outside of the Ring, how could you see him?
L. C. J. Sir, Because I looked through under their Arms as they passed along: The Crowd was still going to fetch Fire, so that they many times about, and came again.

L. C. J. You say you distinguished his Hair to be black; what Colour was his Coat?
L. C. J. Sir, I can't well tell; but I believe it was either grey or black.

L. C. J. Had he any Badge?—*L. C. J.* Sir, I believe he had.
L. C. J. Where was it?—*L. C. J.* Sir, I saw it upon his Arm.

Mr. Whitaker. Was the Crowd greater about the Fire at some times than others?
L. C. J. Sir, Yes, the Crowd abated; some went to *Hobbs*, and some to the Right, and some to the Left.

L. C. J. The last Witness said, the Fire was burnt as a Coal.
L. C. J. Sir, Yes, the Fire was burnt as a Coal; and as I was going home, I met this Man: Says I, There goes the Queen's Waterman: Says he, What have you to say to the Queen's Waterman? Nothing, says I, but God bless the Queen, and her Watermen too. And then he gave me a Kiss, and then we parted.

Mr. Whitaker. Did you ever hear him talk disrespectfully of the Queen or Government?
L. C. J. Sir, No; quite otherwise: In *February* last he came to me, and asked me, Do you hear what a Noise this Mob makes? Yes, said I, I am sorry for it; and I am sorry too, says he: They say the Queen is angry at it; and it troubles me to think of it.

Mr. Whitaker. At any times when there has been publick Rejoicings for any Victory, how has he behaved himself?
L. C. J. Sir, He has behaved himself as a good Man.

L. C. J. I take Notice of that Expedition, That you said, there goes the Queen's Waterman: Had you heard any Talk before of the Queen's Waterman?

L. C. J. Sir, No; but I heard that the Guards were coming.
L. C. J. You did not take the Waterman for one of the Guards, did ye?
L. C. J. Sir, No.

L. C. J. But had you heard any sort speak of the Waterman before?
L. C. J. Sir, No.

L. C. J. Where did you meet him, when you had that Favour from him?—*L. C. J.* Sir, Within the Rails; he was going to the Fire, and I was going from it.

L. C. J. Sir, Whence did he come?
L. C. J. Sir, I think either from the Corner, by the Duke of Newcastle's, or from *Chancery*; I don't know which, for I met him within the Rails.

Mr. Whitaker. Did you see Dammaree the first of *March* last?
R. Walker. Yes.

Mr. Whitaker. At what time?
R. Walker. At half an Hour after eleven.

Mr. Whitaker. Where did you see him?
R. Walker. At *Strand-Brick*, I carried him in my Boat.

Mr. Whitaker. Where did you carry him?
R. Walker. Cross the Water.

Mr. Darnell. Did you observe any Clock strike?
R. Walker. Yes; *St. Andrew's* Clock struck two Quarters past eleven before he came into my Boat.

Mr. Darnell. Where did you carry him?
R. Walker. To *St. Andrew's* Church.

Mr. Darnell. Does he live there?—*R. Walker.* Yes, just by.
Mr. Darnell. Did you see him home?
R. Walker. No; I helped him out of the Boat; but I did not go home with him.

Mr. At. Gen. Was you defor to take Notice what o'Clock it was?
R. Walker. No; but I was in my Boat waiting, and heard the Quarters strike.

Mr. At. Gen. You say it struck the Quarters; how many Strokes denotes it?—*R. Walker.* Two.

Mr. At. Gen. Then you did not hear what the Clock itself struck?
R. Walker. Yes; I heard the Clock strike eleven before he came down.

Mr. Darnell. What Hour did the Clock strike, before it struck the two Quarters?
R. Walker. The great Clock struck eleven, and I sat in my Boat and smoked a Pipe, and at the second Stroke eleven I took him into my Boat.

L. C. J. Bore. What Condition was he in?
R. Walker. Very much in Drink.

Mr. Whitaker. Did you see Mr. Dammaree the first of *March* last, at Night?—*H. Hain.* Yes.

Mr. Whitaker. At what time?—*H. Hain.* A little after eleven.
Mr. Whitaker. At what Place did you see him?
H. Hain. At the *Mappels*, in the *Strand*.

Mr. Whitaker. Which Way was he going?—*H. Hain.* I was coming out of *Strand-Street*, and he was going the other Way.

L. C. J. Which Way was you going?—*H. Hain.* I was going out of *Strand-Street* home, where I live.

L. C. J. Where do you live?
H. Hain. Over-against *St. Andrew's*.

L. C. J. Where did you meet him?—*H. Hain.* I met him by the *Mappels*:
L. C. J. What Place did you come from?
H. Hain. I came out of *Strand-Street*.

L. C. J. Which Way did you apprehend he had come?
H. Hain. I did not see him; but he was in the *Strand*, going along towards *Temple-Bar*.

L. C. J. Whereabouts in the *Strand*?—*H. Hain.* On the other Side the *Mappels*, going towards *Strand-Brick*.

L. C. J. What o'Clock was it then?—*H. Hain.* A little after eleven.
Mr. At. Gen. What o'Clock do you take it to be now?
H. Hain. What o'Clock? Why, 'tis past one.

Mr. At. Gen. Which Side of *Drury-Lane* was it you say him?
H. Hain. On this Side *Drury-Lane*.

Mr. Whitaker. Did you meet the Professor at the Bar on the first of *March* last, at what time?
Mr. Hain. I met him in the *Strand*, as I was going home to my Lodging about eleven o'Clock: He was in Drink, and I told to the Gentlewoman with me, Pray, have a Care of the Man, for he is so Drunk.

Mr. At. Gen. Whereabouts did you meet him?
Mr. Hain. I met him about three Doors from the *Seven Tavern*.

Mr. Whitaker. My Lord, we shall find some Witnesses to his Reputation, to show how he has all along demeaned himself.

Mr. Whitaker. Did you know the Prisoner at the Bar?
Mr. Hain. Yes.

Mr. Whitaker. Do you live in the same Parish?—*Mr. Hain.* Yes.
Mr. Whitaker. What are you then?
Mr. Hain. The Church-warden.

Mr. Whitaker. What Behaviour is he of?
Mr. Hain. Of very good Behaviour.

Mr. Whitaker. Is he disaffected to the Queen and Government?
Mr. Hain. I believe no Man better affected.

Mr. Whitaker. Did you ever hear him talk disrespectfully of the Queen or Government?
Mr. Hain. No; quite otherwise: In *February* last he came to me, and asked me, Do you hear what a Noise this Mob makes? Yes, said I, I am sorry for it; and I am sorry too, says he: They say the Queen is angry at it; and it troubles me to think of it.

Mr. Whitaker. At any times when there has been publick Rejoicings for any Victory, how has he behaved himself?
Mr. Hain. He has behaved himself as a good Man.

J. Michalson. The most forward Man is there.
L. C. J. Is he a sober Man?—*J. Michalson.* Yes.
L. C. J. Does he like to drink?
J. Michalson. I have seen him in Drink.
L. C. J. What kind a Man is he then?
J. Michalson. A quiet Temper; not at all quarrelsome, but a law-
 ing Temper.
L. C. J. Did you ever hear him talk about the Meeting-Houses?
J. Michalson. No.
L. C. J. I ask that Question, because there has been a gross Misdake
 spread abroad as if they were serving the Queen, when they made that
 Bullie; that is a Misdake that has gone ahead.
L. C. J. Did you ever hear him say any thing of Dr. Sacheverell?
J. Michalson. Yes.
L. C. J. What did he say of him?
J. Michalson. He said, he wished the Sermon had never been preached,
 as pointed; and then this Trouble had not been.
Mr. Pettegrew. Did you see him after this?
J. Michalson. Yes, I saw him the next Day at Noon.
Mr. At. Gen. Had you any Discourse about the Meeting-Houses?
J. Michalson. No, none at all.
Mr. Darrell. Where did you see him the next Day, and at what Time?
J. Michalson. At Twelve o'Clock I saw him pass by my Door.
Mr. Thynne. You have conversed with him: Did you never hear him
 give his Opinion of the Dissenters, and the Meeting-Houses?
J. Michalson. No, never.

Then Mr. Pettegrew was sworn.
Mr. Darrell. How long have you known Mr. Deemster?
Mr. Pettegrew. I have known him eighteen or nineteen Years.
Mr. Darrell. Do you call him to be admitted to the Government?
Mr. Pettegrew. No, not in my Opinion.
Mr. Darrell. When you conversed with him, how has he declared
 himself?
Mr. Pettegrew. Always for the Government as much as any Man is
 nor Parish, and I believe has been as fit as any Man in getting
 Men to serve the Queen when he was Master of the Company.
L. C. J. What are you?
Mr. Pettegrew. I call myself a Timber-Merchant.
L. C. J. Then I suppose you have not had much Conversation with a
 Waterman?
Mr. Pettegrew. Not a great deal.

Then Mr. Moor was sworn.
Mr. Whitfield. How long have you known Mr. Deemster?
Mr. Moor. I have known him above thirty Years.
Mr. Whitfield. What Character has he had?
Mr. Moor. An honest, civil Man, and as good a Neighbour as can be.
Mr. Whitfield. How has he carried himself to the Queen and Govern-
 ment?
Mr. Moor. I never heard him say a Word against the Queen, or Govern-
 ment, but was always willing to serve the Queen, and particularly when
 he was Master of the Company, in sending Men into the Service.
Mr. Whitfield. How did he behave himself in that?
Mr. Moor. He did great Service to the Queen.
Mr. Whitfield. Were there a great many Men taken up by him?
Mr. Moor. He took up a great many Men.

Then John Hatfield was sworn.
Mr. Whitfield. How long have you known the Prisoner at the Bar?
J. Hatfield. Almost twenty Years.
Mr. Whitfield. How is he with respect to his Principles towards the
 Government?
J. Hatfield. I never knew any Ill by him; I never heard but he was an
 honest, careful Man: I never heard but that he lov'd the Queen.
L. C. J. As to the Matter of his Reputation, I think it is pretty well
 established, and they say nothing against it.

Mr. At. Gen. We come so to try the Man for this Fact only, and have
 nothing to say to any former Transgressions.
Mr. Whitfield. My Lord, we will call no more Witnesses, unless the
 Queen's Counsel give Occasion in their Reply. We think we have proved
 that he was not a free Agent, but under the utmost Force. We hope we
 have made it appear to the Satisfaction of your Lordship, and of the Ju-
 ry, that this Man, though he had the Misfortune to be present when these
 Tumults and Disorders were, yet he had no Share that was criminal in
 them.

Gravina. You will remember that though our Petition did force that
 he carried the Sentence in Prison, yet we have proved that in point
 of Time it was impossible he should be there, and that there was another
 Person that did it. As to the other Witnesses, they take upon them to
 say that he did talk with the Mob; we must appeal to you, the Gentle-
 men of the Jury, and don't doubt but you have taken Notice of what has
 been said; that he was under a Force; and when he was in that Con-
 dition, and in fear of such a tumultuous Assembly, if to free himself he
 did so far comply with them, that will not make him guilty of Treason,
 and leaving War against the Queen.

I must observe as to *Orrell*, that Witness that seems to affect us most,
 and carries us to far as towards *Droxy-Lane*, he does not pretend to give
 an Account of any thing that concern us precedent to that. Now if this
 Man was got into such a Tumult as this, and he did go along with them, a
 little way, and they cannot show that he acted any thing afterwards, there
 will be no Reason to think him guilty of any Crime, at least, not of leav-
 ing War, and so not of High-Treason. We hope we shall stand fair in
 the Opinion of the Jury, that he was not a voluntary or free Agent in
 these Disorders: But if we should be so unfortunate as to be thought other-
 wise, yet we must insist, that the Point which the Queen's Counsel insist
 on, to wit, that the Fact attempted to be proved on the Petition is
 leaving a War, is not yet to be sent a Point, but may deserve a further and
 deliberate Consideration. I am sensible there is one Case of the London

Apprentices, that that Fact was leaving of War, and so High-Treason; but
 I cannot but observe one thing about my Lord Chief Baron Hale, who
 can never be spoke of but with the greatest Esteem that may be, in the
 very Case mentioned, that he differs with the other Judges, and that he
 was of Opinion that that Fact was not leaving War, and he grounded his
 Opinion upon that which we think was great Reason, and that is the Statute
provisæ Mariæ 1. Cap. 22. It is not printed at large in *Kewell*, but is
 in *Regell*; and on View of that Act, his Opinion is well justified,
 for that Act of Parliament shews, that all the several Facts for which the
 Apprentices, in King Charles the Second's Time, were indited, as re-
 ported in *King's Reports*, all the several Circumstances, that are in that
 Case, were not looked upon then to be High-Treason. But even in that
 Queen's Time, who had left Reason to be very apprehensive of Tuma-
 ls, and Wars, in that Statute made, to make the Actors in such Tumults
 guilty of Felony: And if such Tumults did amount to leaving War, and
 was High-Treason, it is strange, that the Parliament should make so
 unnecessary a Statute as this, *provisæ Mariæ*. And before Queen *Eliza-
 beth's* Time, no one can give an Instance, that a Tumult of this Nature was
 looked upon, or adjudged as leaving of War. That it was not so before
 the Statute of 13 *Edw.* is plain, because that Statute seems to be made on
 purpose to flow it was not a capital Offence, and that such Tumults had
 not been adjudged leaving War, and so not Treason, before that statute
 of the 13th of Queen *Elizabeth*; and for that very Purpose, and to pre-
 vent such Riots and Tumults, was that very Statute made. And the Pro-
 vision made by this Statute of Queen *Elizabeth*, which was a temporary
 Law, was the Reason of the Refusal on the Earl of *Essex's* Case, and
 that Statute made him Indicted for leaving leaving War and High-
 Treason, and shews that it was necessary to have another Act besides the
 25 *Hen. III.* to make such Tumults and Riots Treason.

The Case in *King's Reports*, of *Myssenger*, and the others, supposing
 it to be Law, will not warrant the adjudging this Case to be Treason,
 in regard those appears to be many Circumstances as these Cases in *King's
 Reports*, which are not proved in this Case now before your Lord-
 ship. But I must needs say, the Prisoner at the Bar has had so little Care
 taken of him, that I had no Notice of this till Eight o'Clock last Night,
 and have not had Time to look into the Cases, and to be able to discharge
 my Duty to my Client as I ought; but I am sure, the Gentlemen that
 appear for the Queen have so much Candour, that they will not desire
 any thing in this Man's Case, but what shall be a Precedent in all future
 Cases; therefore I shall state the Cases only upon for the Authority
 of the Resolution in *King's Reports*, as well as I can, upon this short
 Notice. The first Case is in a *London*, *Vol. 5.* it was the Case of the Ap-
 prentices of *London* and *Southward*: They assembled together upon a for-
 med Design, concerted and contrived among them before, to break open
 the Prison, to kill the Lord-Mayor, to burn his House, and to seize some
 Arms in Houses near the Tower of *London*. They had a Trumpet before
 them, and a Flag displayed with them, and that was adjudged to be leav-
 ing War, within the 13 *Edw.* I must observe, that this was an Opinion
 not given in Court, nor upon a special Verdict, but given privately, and
 not otherwise; so that we think the Authority in that Case will not weigh
 very much, though all the subsequent Cases in *King's Reports*, and
King's Reports, are built on the Authority of this Case, and yet the
 Judges in this Case, in *Anderson's Reports*, rely for that Opinion on the
 Statute of 13 *Edw.* and that Statute was on very great Reason made
 to prevent the ill Designs then on Foot by the *Roman Catholics*. There were
 many *Roman Catholics* then began openly to shew their Aversion to the
 Reformation in general, and it was then, for the Preservation of that good
 Queen and her Government, thought necessary to enlarge the 25th of
Edw. III. and also to make the Design to levy War High-Treason
 during her Life only, so that that Case, in a *London*, was not resolved on
 the 25th of *Edw. III.* but on the 13th of *Edw. III.*

There is another Case, which was the Earl of *Essex's* Case, and that was re-
 solved on as an Authority in *King's Reports* of the Earl of *Essex's* Case, but that
 differs from this: There was a Design of the Earl to have Assistance
 from the City, and by Force to remove his Exemptions from the Queen, and
 with armed Force to go to the Queen's Palace, and so her Person, and an ac-
 tual Rising and Appearing in Arms accordingly. This was conspiring
 the Death of the Queen, and leaving War in the most notorious Manner;
 and this was one of the Cases relied on in *Anderson's* Case: But here,
 in the Case now before your Lordship, there is no one Circumstance resem-
 bling the Earl of *Essex's* Case. There is one Circumstance in that Case ap-
 plicable to ours, and that is the Resolution of the Judges, in the Earl of
Essex's Case, that were People by Accident came among, and were in
 Company with the Earl of *Essex*, and his Adherents, and afterwards de-
 parted upon Proclamation made, they should not be guilty of the Treason.
 In the Case before your Lordship, it appears, the Prisoner came there
 by Accident; and we have shewn by Witnesses, he quickly left these dis-
 orderly People.

Another Case relied on in *King's Reports*, is, that in *Orrell* Case, the
 Case of the People that kept *Lambeth House*; that was a most unjustifiable
 Act, done in Despair, and in the utmost Contempt of the Crown and Re-
 gular Dignity, and with an armed Force with Drums, and an armed Mul-
 titude; and the Resolution in that Case, will be no Warranty for the ad-
 judging this Case of the Prisoner Treason, supposing we should not be so
 happy as to have our Witnesses believed, that we were brought in by
 Force; for, in our Case, here are no Drums, nothing resembling War,
 but only a tumultuous Rabble.

The Case of *Bradlow* and *Burns*, in *King's Reports*, 123, is wholly
 built upon, and absolutely depends on the Authority of the Case in
 2d *Anderson*; and yet in the Case of *Bradlow* and *Burns*, there was
 a previous Agreement, to go from House to House, and to pull down
 all Indulgences. It is true, that the putting this Agreement in Execu-
 tion accordingly, is referred to be High-Treason. We think, that that
 Agreement, and Rising according to it, is more than appears in this
 Case of the Prisoner at the Bar; and besides, it is a Resolution in the

29th Year of Queen Elizabeth, when the Statute of the 13 Eliz. was in Force, and depends on the Authority of the Case I have mentioned in *2d Ayley's Reports*. But in our Case there is no Proof that we knew any Thing of this tumultuous Meeting, nor that by Accident we fell among them. We hope, that if the Jury shall think it any Colour to be laid, that we have not answered by our Witnesses (whose Credit is not questioned) the Evidence go'd against the Prisoner, that this Point may be referred to us, in our Affidavit, that it is not settled, that this Case of *Ayley*, and the others in *Kyng's Reports*, is Law: But supposing it should be Law, yet we hope it will not affect us, for it goes upon a previous Agreement, and all there were Partners of it, and willing, and outrageous Actors in it, and knew of the Design before executed: And there was this Circumstance, that when the Captain of the Guards came to execute them, they said if it was the Duke of York; and when they apprehended it was the Duke of York, they called out. That they came out for the Guards, and that they would come and pull down *Widdells* Station, by their Declaration, it is plain, the King and his Associates were aimed at. But in this Case of ours, there is nothing of nothing Authority charged on this Man, but that he came by Accident, and acted only by Compulsion and Force, when unhappily amongst a disorderly Mob. Therefore, my Lord, on the whole Matter, in regard we do, with Submission, think, that the Law is not settled by the Rebelliousness of *Kyng's Reports*, but that a Review thereof may be admitted, and in regard we think our Case is far different, and a much better than any of the former Cases, which have been looked upon or esteemed as leaving War, we hope, that in case the Jury should think we are guilty of any criminal Act, that whether such Acts be leaving of War, or no, shall reserve a further, and more deliberate Determination. I shall therefore take up no more of your Lordship's Time.

Mr. Darnley. My Lord, the first Time I heard from the Prisoner relating to the Case, was last Night last; and must own my Opinion to be, that a longer Time is necessary to encounter the Authority of the Report of my Lord *Kyng*. But, my Lord, without disputing the Authority of that Book, we must say, this Case comes far short of that Resolution; for there was a plain Hostility, a Captain, with a Sword drawn, Colours, two Meetings to confound, and a Resolution taken, a refusing and wounding the Constable, and striking the Officer of the Guards, and their Intention to pull down Bowley-Houses, which might be any House they thought fit to call so. As for the Case of *Coxsford*, it is plain, there was in aiming themselves, they had put on Armour to act offensively, as well as defensively; they proposed to come to London, and to have our Jan with them, and that Case was adjudged High-Treason. For the general Intention to pull down Inlosures. Where there is any Rebellion, that these great Tumults amount to High-Treason, it is on this Foundation, that the Design is general, and in an exercising of a Royal Authority, which Nobody but Her Majesty ought to make use of. It is said in *Mellish's Case*, that the Intention may be such, and that such Intention must appear by each Proof as will satisfy the Jury. Now how do they offer to prove the Intention of this Man? If there is any Thing to prove it, it is Subjection to the pulling down the said Meeting-House, for it is plain he was not there till the Design was to be executed, and the Fire had been made an Hour before he came. Now if he comes there, and ballows, and rejoices at it, this cannot make him Guilty. I agree, that if any Nunber of Persons are going to commit High-Treason, and a Man comes there, and joins with them in the Execution of that Act, he is Guilty, but if he be ignorant of their Design, and ballows and rejoices with the Crowd, that will not make him Guilty: And in this Case, it appears, that every Body that joined by the Crowd that Night were confirmed to do so, but where such Person, who is got into such a tumultuous Assembly, does get off so full as he can, this cannot be High-Treason, or any Crime whatsoever. If the Prisoner had gone to *Dewey-Lane*, and they had judged that he did any Thing there, we should have had a harder Case than we have now, but we think there is no Proof of the Intention of this Man to commit those Acts of pulling down the Meeting-Houses in general, and of assisting in the Execution of that Intention. My Lord, if our Witnesses (whose Credit stands unimpaired) be believed, it is impossible that he could be concerned in this Design, or the Execution of it, or know any Thing of it, till it was executed: For it doesn't appear, that on any of the Days, when the Mob were together, that he was among them, or that he acted any thing till after the Meeting-House was pulled down, and the Fire made. We have shown where he was all that Day, and that it was near Eleven when he came to the Fire. I think we have shown, by the Waterman that carried him Home, that there was not room for him to hear any there in this Outrage; far between the Time of his coming to the Fire, and going Home by Water, there is no room for him to do any Thing more, than to go between those Places. There is no Proof that he did any Thing but to see the Mob in a manner forced him to do, and perhaps it might have cost him his Life in so tumultuous an Assembly, or, at least, have cost him his Health, if he had done less.

Mr. At. Gen. My Lord, I beg Leave to say a few Words, in Answer to what has been insisted on by the Prisoner. They have insisted on these three Things: First, That notwithstanding our Witnesses have given that Account which you have heard, yet they are mistaken in the Fact, for he was not the Man that they say was there bringing the Brass Candlestick; that it was another Man, a little Man in his own Hair, and not like the Prisoner, and therefore he is not Guilty of the Act charged on him. In the next Place, they tell you, That something he was there, and that our Witnesses have told you Truth, yet he was there involuntarily, and what he has done was under a Force, and therefore he can't be looked upon to be guilty of the Treason, because, intentionally, he did not go along with them in that Design. The third is, That admitting you should believe all that the Witnesses say, that he was there, that he did know of this Design, and acted in it, in concert with the rest, yet this Charge doesn't amount to High-Treason, and therefore he ought to be acquitted.

Now, tho' this is the last Thing mentioned, yet it is of the most Consequence, and ought to be taken Notice of first, because it is the guilty of the Fact, yet if it doesn't amount to Treason, he must be acquitted. They tell you it is a notorious Fact, such a Tumult as is not to be endured, that a Punishment ought to be inflicted on those People that were concerned in it: But they insist on it, that this is not High-Treason, as charged in the Indictment. Now I think it is a plain, plain British Law, that whenever there is Force used against the Government, whenever there is a general Intention to work a Revolution, whenever there is an Opposition complained of, and the People of Force in order to remedy it, and there is an Assembly of a Multitude for such Purpose, it is leaving War; for it is an Opposition to the Government, and the Civil Magistrate.

My Lord *Gid* in his Comment on the Statute of Treason, takes Notice of this, and says, That if any go about by Force to reform any thing they complain of, it is leaving War, because they take upon them Royal Authority, which is against the King. The Case they mention of *Bradford*, where a great Number assembled, in order to settle the Rate of Wages, they thought there was not enough given them for their Labour: They did agree to publish an order to redress that Grievance, and that Appearance in publick was looked upon to be High-Treason.

It is not proper here, to enter into all the Cases that may be cited, the last Book they take Notice of is my Lord Chief-Justice *Kyng's*, which was printed with the Approbation of all the Judges of the *Queen's Bench*; and every body knows that he was at great a Judge, particularly in the Crown-Law, as any that went before him. And it is the Opinion of all the Judges, excepting one, that this Case is Treason; and you see on what his Opinion was founded, that it was not High-Treason, because there is a particular Act of Parliament which says, That in Case Proceedings had made for them to depart, those Persons that do not depart on that Proclamation shall be guilty of Felony. That Act relates only to the Meeting and Assembly on a private, particular Account, for if a Lord sues a Waste, and the Tenant sits in Opposition to that Act, in order to redress that Inconvenience, Nobody will pretend to say, it extends to High-Treason; because it is a private Inconvenience that goes no further than that Manner. But at the same Time that they made use of this Distinction, it is taken notice of, That if there be a publick Law, that is looked on to be the Grievance, and they came to redress the Grievance arising from that Law, that is opposing the Publick, and is High-Treason.

Now, to compare these Cases: There was a Design on *Tuesday Night* declared against the Mob, that on the next Day they would destroy all the Meeting-Houses thereabouts: Sure must say (let their Opinions be what they will), that destroying a Meeting-House is more Seditious to the Publick, than destroying a Bowley-House. And yet their answer to pull down the Bowley-Houses was adjudged to be Treason. And shall they be hanged for pulling down Bowley-Houses, and have nothing but a Fine for pulling down Meeting-Houses? Every body knows they are allowed by Law. The Act of Parliament that gives Indulgence to the Dissenters, allows them so much in those Places: It were to be wished, there were no such Persons that did dissent from the Church; but these Places being allowed by Law, it is lawful for them to meet there. Now for People to find fault with this Law, and to say, We will redress this Inconvenience, though the Publick will not those three People into Jail for meeting there, we will pull down their Houses against their Law; this is an Insultance not to be suffered. This is assuming an Authority that don't lie in the People; every body that lives under a Government has Courts of Justice to apply to, and when any Thing is acted contrary to Law, the Courts of Justice are open, and I may say any one to show that there has been a Denial of Justice upon due Application.

Now for People to meet together to do right to themselves, and to be Judges and Executioners at the same Time, is never to be borne, but deserves the most severe Prosecution; and it is a Sense of this that brings this Case here. For, as to the Man, I never saw him before: Nobody bears him any ill Will; but it is known that there have been such Riots and Rebelliousness committed; and it is agreed that he was among them. This brings me to take Notice whether our Witnesses are mistaken in saying he was there: They know the Man; they spoke with him; and they are positive to him; and they give a particular Account of what he and they said, and what they saw him do; and now they say, our Witnesses are mistaken. As to the House, little is to be depended on, because People are so uncertain in their Computations: It is plain they were all supplied by Twelve o'Clock, so that he might stay as long as any, and yet he be dead by Twelve o'Clock, for it is that Time the *Guards* came and suppressed them. They gave an Account of him till Ten o'Clock; I find there was no *Hufkins* that detained him till that Time; he had nothing to do in the Alehouse; he was got drunk, and he fled in this disorderly Place till the Time was proper for him to come out, and at that time this Man. For it was about Ten that one of our Witnesses saw him at the Meeting-House, and at the Fire, and he went along with him towards *Dewey-Lane*, and there he left him: And this age as with what he saw two Witnesses say, they say, they saw him by the Duke of *Neuville's* Corner, coming from *Queen's Street*, and going towards the Fire: It was after this, that he had hallooed them away to *Dewey-Lane*, and was again returning; it is plain by the Evidence of both Sides, that he was there. All that they insist on, is, that he was forced into the Crowd; but how agreeable is that to the Story of the Witnesses that saw him bring the Seamer, and carry it in Procession round the Fire, and throw it in?

He calls *Huff*, who tells you he was his Friend, that he had been with him all Day. He tells you, that they received News that there was a Fire in the Church; that the Prisoner was concerned for a Gentleman that lived there, and that they went away immediately to assist him. *Huff* says, he went with him as far as *Temple-Bar*, and then the Crowd was so great, that they were forced by the Torrent of People up *Dewey-Lane*, and through *London's Inn Square*, and they could not get away.

At the same time, the Commission has been working to improve the quality of the data it collects. It has been particularly concerned with the accuracy of the data on the number of people who are employed in the public sector. In the past, the Commission has often found that the data on public employment were inflated. This was due to a variety of factors, including the fact that many public employees were not properly recorded in the official statistics. The Commission has now taken steps to correct this problem. It has introduced a new system of data collection which is designed to be more accurate and reliable. This new system has been put in place for the 1990 survey, and the Commission is confident that it will provide a more accurate picture of public employment in the future.

During the past year, the Chinese government has made a number of important decisions, in order to improve the country's economic situation. First, the government has decided to increase the production of grain and other foodstuffs. This is a very important step, as it will help to ensure that the country has enough food to feed its people. Second, the government has decided to increase the production of cotton and other textiles. This is also a very important step, as it will help to ensure that the country has enough clothing to wear. Third, the government has decided to increase the production of steel and other metals. This is a very important step, as it will help to ensure that the country has enough raw materials to make its products. Finally, the government has decided to increase the production of coal and other energy sources. This is a very important step, as it will help to ensure that the country has enough energy to power its industries and homes.

They have indeed upon the Statute of the right of Habeas, which they use as an Argument to shew that they are not Traitors within the Statute of Edward the Third, that they are not a Crime, and a Crime of High Treason. But then how stood the Case of the Inclosures at that Time? Several Persons conspired to throw down Inclosures, and that was adjudged High Treason, because it was a Conspiracy to levy War; and how could that be High Treason, if taking Arms to throw down Inclosures were not for We take it, that the Case in *Adonion* is in Point, and these Cases are affirmed by the Judges in the Case of *Sidgely* so that it is the greatest Authority, and never to be shaken. They say the Case in *Adonion* is a private Opinion; as is the Opinion of the two Chief Justices, and the Master of the Rolls, who are the highest of the Law, and yet they are not the same, and therefore they are to be followed.

Thus flows the Fountain, that there is but the one Perfection, that the only way for that it is not in the Power of every Man, according to his own Fancy, to find Fault with the Government, and also the Laws; and deprive the blessed of any Benefit he is entitled to by Law, it is an Invasion of the Royal Authority; they may by the same Reason fall upon a Man's Person, as they may pull down his House, and things of this Nature must run into endless Confusion, and none can be so, unless Peril, that are due Guilty be brought to Punishment.

Their Authorities then being so strong, we hope, that, as the *Café Anglais*, on the Evidence for the Queen, that the Professor has been proved guilty of the Charge in the Indictment: For that there was a general Design, appears; & what was done in the Execution of it. The only Question is, Whether this Man was privy to any precedent Design? And for this, I rely on the Lord Effra's Cafe, in *Moor's Reports*, which was
 Vol. VIII.

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tart, most of abillate need-its be laboured by the Civil Magistrate, where the publick Peace is rebelliously broken, or private Property notoriously invaded. Without their full and publick Sanctions, it is impossible that Order and good Government should subsist in any Nation; and how movingly to sever your present melancholy Situation may plead for Pity and Compassion, yet the good of the Whole, and the Promotion of the Interest, are Considerations of much higher Importance: And you have the left to offer for yourself, since the Nature of the Crimes you have committed is such, as that they must be the Effects of very various Principles, or extravagant Follies. One of you both offers Violence to a Body of People, whom the Law has thought it to take care of; and your manner of proceeding was attended with great deplorable Circumstances of Torment and Mischief, such as threaten'd Destruction and Destruction to an innocent Neighbourhood, when to your own notorious Admissions you added the Fury of an Element more cruel and merciless than yourself. You have indeed endeavour'd to excuse yourself by pleading, that your Crime was the Effect of Drunkenness, which is a much weaker Defence than your Fellow Prisoners make, who say, he rob'd us out of Necessity. Neither of these Cries will justify a Breach of the Law in the least degree, much less will it excuse High-Treason, or Felony. The notorious Persons, indeed, has a fairer Claim to Pity than the Drunkard; for the latter voluntarily weakens his Reason, and inflicts his Patients, and by that very Action is guilty of an Offence against common Decency, and the Laws of the Land; while it is possible the Misfortune of the other may be unavoidable, though they are too often the Consequences of Idleness, Extravagance, and Debauchery. We live in a Trading Country, and, I believe, there are few Instances where a Man in Health, and of an honest Character, may not earn the Bread of Industry, and eat it in Security. It was for this Purpose, for the Security of the Inmate, that the very Laws were made by which you are now to suffer: And as these Laws are founded upon an higher Institution, even the Laws of God, you will do well to consider yourselves as Offenders against the Laws of your Maker, and accountable not only for these Crimes, but for every Action of your Lives, at a higher Tribunal, at which you are likely to appear in a short time, perhaps in a few Days. Upon these Considerations, the Lenity of our Constitution gives a short Respite to Prisoners in your deplorable Circumstances; and this Cury provides a Clergyman, whose Prudence and Experience enable him to advise and assist you in making a proper Preparation against your approaching Change; to which important Preparation I shall assist you,

having first discharged the Court of the Duty incumbent upon it, by pronouncing the former Sentences the Law has appointed.

You Daniel Danvers, having been convicted of High-Treason, the Judgment of the Law is, and the Court doth award:

That you be carried from hence to the Place from whence you came, and from thence be drawn upon a Hurdle to the Place of Execution, where you shall be hang'd by the Neck 'till you are almost dead, and then alive, you shall be cut down, your privy Members shall be cut off, and your Bowels taken out, and burnt before your Face: That your Head be sever'd from your Body, and your Body divided into four Quarters, to be dispos'd as the Queen shall appoint. And the Lord have Mercy upon your Soul.

And you Sampson Archer, having been convicted of Felony, with the Bench of Clergy; the judgment of the Law upon you is, and it is awarded by the Court:

That you return from hence to the Place from whence you came, and that from thence you be convey'd to the Place of Execution; where you are to be hang'd by the Neck 'till you are dead; and the Lord have Mercy on your Soul.

Danvers. My Lord, I desire my Wife and Children may have Liberty to come and see me in Prison, in the Absence of the Keeper.

Mr. Serj. Richardson. As for seeing your Wife and Children, that we don't deny you; but we can't allow them to be alone with you, because it may occasion an Escape.

Danvers. My Lord, if any other Minister will be so kind as to visit me in my Dungeon, I hope it will be permitted.

Mr. Serj. Richardson. Ay, by all means. 'Tis a Liberty that, I think, was never refused. You shall have all the Favour that is usually shewn to Prisoners in your Condition.

Then the Prisoner was taken away, and the Court proceeded to the other Business of the Sessions, and afterwards adjourn'd to Wednesday the 15th of May following.

Upon the Report of the Prisoners Cases to the Queen, they had some remission, and some time after Danvers received his most gracious Pardon.

LVII. The Trial of FRANCIS WILLIS, a Footman, for High Treason, in levying open War against Her Majesty, in the Kingdom, under Pretence of pulling down Meeting Houses. 9 ANNÆ, 1710.

[At the Sessions-House in the Old-Bailey.]

Devina Regina vestris Willis.

Die Ferris Viginti die Aprilis Anno Domini & Regine gratulatio.

THE Court being refused, as in the Trial of Danvers, and the same Judges being present,

Cler. of Arr. Middlesex Cryer, make Proclamation.
Cryer. O Yes, O Yes, You good Men of the County of Middlesex, summons'd to appear here this Day, to try between our Sovereign Lady the Queen, and the Prisoners that shall be at the Bar, answer to your Names as you shall be call'd, every Man at the first Call, upon Pain and Peril shall tall thereon.

Then the Jury that were return'd at the Panel, were all call'd over, and the Appearance of all these that answer'd to the Call, were recorded.

Cler. of Arr. Set Francis Willis to the Bar.

(Which was done).

Cler. of Arr. Francis Willis, hold up thy Head.

(Which he did).

Cler. of Arr. You the Prisoner at the Bar, these good Men, whom you shall hear call'd, and do now personally appear, are to put between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be Sworn, and before they be Sworn.

Willis. My Lord, I desire that none of the Gentlemen that served upon the Jury Yesterday, may be sworn now.

L. C. J. You have a Right to challenge Five-and-Thirty peremptorily, without showing Cause; and as many more as you can show good Cause against. If any of the Jury that served Yesterday appear now, it will be a proper time to take the Exception.

Mr. Durnell. My Lord, I take it, the Prisoner's Intent by this Motion, is to fasten the Time of the Cause. He does not intend to make any Challenge, but to the Jury of Yesterday, whom he conceives, in force of course, to have declared their Opinions upon the Fact already; and therefore desires the Clerk may pass over their Names as they stand upon the Panel.

L. C. J. Let it be so.

Cler. of Arr. Thomas Nichol, Esq.

(Who appears'd).

Cler. of Arr. Hold Mr. Nichol the Book.

You shall well and truly Try, and true Deliverance make between our Vol. VIII.

Sovereign Lady the Queen, and the Prisoner at the Bar whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cler. of Arr. Joseph Spencer.

(He appear'd, and took Oath).

In like manner the other Ten Gentlemen appear'd, and were sworn, whose Names follow:

J U R Y.

Thomas Nichol, Esq.	William Breakspoor,
Joseph Spencer,	Charles Gardner,
John Perrens,	Richard Hazzard,
William Hargrave,	Samuel Brown,
John Ash,	Francis Higgins,
Thomas Phillips,	Donel Braine.

Cler. of Arr. Cryer, count these.

Thomas Nichol.

Cryer. One, and so of the rest.

Cler. of Arr. Daniel Danvers.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

Are you all sworn, Gentlemen?

Cler. of Arr. Cryer, make Proclamation.

Cryer. O Yes! If any one can inform my Lords the Queen's Justices, the Queen's Solicitor, the Queen's Attorney-General, or this Inquest now to be taken, of the High Treason of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognition, to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognition. And all Jurymen of Middlesex that have appear'd and are not sworn, may depart the Court for this Time, and give their Attendance here again To-morrow Morning.

Cler. of Arr. Francis Willis, hold up thy Hand.

(Which he did).

Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Francis Willis, late of the Parish of St. Andrew, Holborn, in the County of Middlesex, Labourer, for that he on having the Fear of God before his Eyes, but being moved and seduced by the instigation of the Devil, &c. (given as the Indictment, mutatis mutandis), against the Peace of our Sovereign Lady the Queen, he

H. Grece. No, I am not.

L. C. T. When you went to *Neagate*, the Man that you saw there, did you believe him to be the Person that you saw displaying the Colours?

H. Grece. Yes, I did.

L. C. T. How long was that after you saw him at the Fire?

H. Grece. About ten Days.

L. C. Bares. Pray, what makes you less knowing, or believing now, than you was then?

H. Grece. My Lord, his Cloaths are altered, and he has another Wig on.

Mr. Dorell. Pray tell us any one thing you had, to know this Man by?

H. Grece. No other Influence, but that he furnished the Colours.

Mr. Dorell. Do you know the Colour of his Coat?

H. Grece. I believe it was blue.

Mr. Dorell. Are you sure it was not green?

H. Grece. I am not sure.

Mr. Dorell. When you saw him in *Neagate*, what did you know him by?

H. Grece. By his Features, I thought he was the King's Man.

Mr. Dorell. Pray describe any one Feature, such as him by.

L. C. T. It is difficult to describe a Man's Face, and first to describe his Hand. If you were asked how you knew a Man? And if it would be difficult for you to describe it, how do you know a Man's Face in Court, unless you see him in the very particular in his Face; and yet that is something in the Composition of a Face, by which it is known, which none of you has a Power to describe.

Mr. Dorell. You say he is altered from what he was in *Neagate*?

H. Grece. He has quite another Dress, and another Wig, he had blue Cloaths then.

Mr. Dorell. And you say, you saw the Man that had the Colours had blue Cloaths?

H. Grece. Yes, indeed I saw them to be blue; but cannot be positive whether they were blue or not.

Mr. Dorell. Yes, but you say, in about a Month already, on your Examination, you have been several times asked if you know, you ought to consider what you have said before, and it is a mistake to think that the Man you saw in *Neagate*, was the same Man that furnished the Colours.

Mr. Dorell. I am sure, whether the Man that furnished the Colours had blue?

H. Grece. It was blue or green.

Mr. Dorell. You say, you saw the Man that furnished the Colours to be blue?

H. Grece. I am not sure.

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ness, it may be disputed, whether he shall be convicted on that Evidence, because it is said, there must be two Witnesses on an Overt-Act. If they have no other Evidence but his Confession, there will be a proper Tent to make your Objection; but 'till then, there is no reason to object against what is now offered.

Mr. Darnell. It is expressly the Words of the Book, that Examination before a Magistrate shall be Evidence, which seems to imply the Negative, that others shall not be.

Mr. Sol. Gen. The Question was, Whether that Confession was sufficient to convict? And not, Whether it should be given in Evidence? Let us go on; if our Evidence is not sufficient, you will take Notice of it.

Mr. At. Gen. Mr. Darnell would stop the Witnesses as if there was something in that Act, or in the Law, that shall exclude you from bearing what the Man did confess of this Fact: No, surely, there is nothing that can hinder that Evidence. The Act don't hinder any thing in point of Evidence, when it says, you shall not convict a Man unless there be two Witnesses to the Fact: It don't say you shall hear no other Evidence. This indeed was mentioned in the Case of Capt. Smith: He had the French King's Commission, and it was left among other Papers: He was shown the Parchment, and own'd it, and that Confession of his, that he had such Commission, was given in Evidence.

Mr. Sol. Gen. According to this Objection, he would exclude all Confession from being Evidence. He applies not examining to the Confession of the Prisoner, before he knows what it was that he did confess. Now this Act was never intended to exclude all Evidence to Confessions; all that it requires, is to have two Witnesses to Overt-Acts. The Question is not now, Whether a Confession shall be an Evidence of an Overt-Act? But, Whether any Confession whatsoever may be given in Evidence? And surely it was agreed in the Case of Captain Smith, that his Confession, as to the Circumstances, was Evidence, but not as to the Overt-Act. On the Trial of Bell*, the Question was, Whether he was an Englishman? His Confession was Evidence to that Purpose, admitting it was not to the Overt-Act. We shall not call this Man to prove a Confession of an Overt-Act, but to prove his Confession in general, what was the Occasion of his being abroad that Night, and that a proper Evidence; for that Tameal must be either a Riot, or leaving War, according to the Intention of those that got together: What shall explain that Intention, but the Confession and Declaration of the People that were got together? So that we hope we are proper to examine to this Point.

Mr. Darnell. I remember the Case of Captain Smith: I remember they brought him that knew the Hand of the Admiral of France, to prove, that they saw his Hand to the Commission; but his Confession was not admitted as Evidence.

Mr. Justice Trench. I never knew it disputed, but a Man's Confession might be given in Evidence.

Mr. Darnell. The Act says, he shall not be tried, but on the Oaths of two Witnesses to an Overt-Act, unless the Party willingly, in open Court, confess the same, which shows what Confession it is that it is to be admitted of.

L. C. J. Then you say, no Confession shall be given in Evidence: Now, pray, What Words are there in the Act, that say no Confession shall be given in Evidence?

L. C. Baron. A Confession shall not supply the want of a Witness; there shall be two Witnesses to the Treason notwithstanding: But to say it shall not be given in Evidence, there is no ground for it.

Mr. At. Gen. Mr. Lord, pray tell us what was it that pass'd between you and the Prisoner?

Lord. All that he said to me, when he came before my Door, was that they made him Captain of a Party that Night; that he took a Piece of a Window-curtain, and made it a Colour; and we burnt the Clock in Holborn.

Mr. At. Gen. And is this the Man?—Lord. Yes.

Mr. Sol. Gen. Do you remember what Cloaths he had on?

Lord. I don't remember the Colour.

Mr. Sol. Gen. What is the Livery his Master gives?—Lord. A Blue.

Willis. Did I say I burnt it, or that the Company burnt it?

Lord. He said, We burnt.

Mr. At. Gen. That is, he and the rest of the Mob.

Mr. Darnell. You did not see him do any thing?

Lord. Nothing at all.

This Robert Caldwell was sworn.

Mr. Sol. Gen. Do you know Mr. Gross?—Caldwell. Yes.

Mr. Sol. Gen. Do you remember you went with him to see a Prisoner?

Caldwell. Yes.

Mr. Sol. Gen. What Prisoner did you see there?

Caldwell. The Prisoner at the Bar.

Mr. Sol. Gen. Did you see any other Persons but him?

Caldwell. Not We saw *Dumoreux* and *Parish* below, but no other above.

Mr. At. Gen. What Cloaths had he on then?

Caldwell. He had a blue Livery on.

This William Orrel was sworn.

Mr. At. Gen. Pray acquaint the Court and the Jury what you know of the Tameal which was the Fifth of March last, in those Parts where you was?

Mr. Orrel. I don't know any thing of the Prisoner at the Bar; but when I came to the End of *Fetter-Lane*, there was a Footman in a blue Livery, a cloven-hunged Man of his Side. I saw the Constable there, and said to him, Here is a great Riot, I am sorry you can't put a Stop to it: Says he, Here is such a Mob, we can't suppress it: Says he, There is a Footman there, I know him very well; I know whose Man he is. I can't tell who he was, but I saw a Footman there hurrying, and bidding them make haste. I went into the Meeting-House in *Fetter-Lane*, and saw the Timber pull'd down, and thrown into the Fire.

Mr. At. Gen. You was at that Meeting-House in *Fetter-Lane*; Was you at any other?

Mr. Orrel. I was at Mr. Burgess's and Mr. Earl's, and at that in *Black-Friars*; I went with the Guards thither.

Mr. At. Gen. Give an Account of that.

Mr. Orrel. When I was in *Lincoln's-Inn-Fields*, the City was, To the City, to the Bank. When I came to the Guards, I led to the Captain, For God's Sake go into the City, for if they go to the Bank, we are undone; so there was a Report, that they were gone into the City. I asked several *Palings* as we went along, Where is the Mob? Am they gone into the City? At last I heard they were gone to the Meeting-House in *Black-Friars*, and were pulling it down. I went directly with the Guards up *Fetter-Lane*; I headed them in the *Old-Bag*, and ran before, and got the Guards open, and told them, the Queen's Guards were coming: I thrust'd them the way to the Meeting-House, and there they met the Mob pulling it down.

Mr. At. Gen. Do you know of any other Meeting-House that was pull'd down? Was you at Mr. Burgess's?

Mr. Orrel. I was in at four times: I saw it full of People; I saw the Galleries and Pulpit beaten in, and pulled down; and as I stood upon a Board, a Fellow was getting it up, and another, God damn that lazy Fellow, what does he do there?

Mr. At. Gen. You say you were there four times?

Mr. Orrel. Yes, I was in Mr. Burgess's four times, twice in Mr. Earl's, once in Mr. Burgess's, and at the Door of *Black-Friars*.

L. C. J. What was the Cry there?

Mr. Orrel. Nothing but in general, Damn them, we will have them all down. I heard Mr. Dimes's House enquired for, but they mistook my Lord *Wharfedale*, and St. James's, often; I believe I heard it call'd out a thousand times: And when I was at Mr. Earl's in *Drury-Lane*, I call'd out, Where is *Jolly*, the Waterman? because I wanted to know where he was: Some said, He is gone to St. James's, others, to my Lord *Wharfedale*; No, I said others, he is gone to the Back-door, so break it open.

Mr. Darnell. You say you saw a Footman at the Fire; pray, What time of Night was it?

Mr. Orrel. About Ten, or a little after. As I went from *Fetter-Lane*, I went along with them, as they carried the Wood to *Hallam*, (but went at a distance on the other side the way) I saw the Footman at the End of the Alley, as you come out of the Meeting.

Mr. Darnell. Was that before the Fire was lighted, or after?

Mr. Orrel. It was after the Fire was lighted.

Mr. Darnell. What was the Footman doing?

Mr. Orrel. He was looking and hurrying the Mob.

Mr. At. Gen. My Lord, we have done with our Evidence for the Queen, and submit it to your Lordship.

Mr. Darnell. My Lord, I am Counsel for the Prisoner, who stands accused of High-Treason, and the Instance is in leaving War against the Queen. To make this out, the Gentlemen of the other Side began with shewing, that there was an Intention to pull down Meeting-Houses in general, that was open'd. To make that out, the fell *Willis*, *Topsy*, says, That as he was going through the *Yough*, he heard a great Cry among the Mob, that they would go and pull down Mr. Burgess's Meeting-House; it don't appear, that there was any more named. I must agree, if the Design were to pull them down in general, and he acted in that Design, I can make no Question, but it would be High-Treason; but if the Design was only to pull down Mr. Burgess's, it was only a particular Injury to him, he might have his Remedy by Action for it, and the Government might prosecute him for a Riot, but if that be the Case alone, that can't be High-Treason: There must be a general Intention to pull down Houses, or Inclosures, and not to pull down any particular Man's House or Inclosure.

After he has given this Account, the other Witnesses give an Account, That at some of the Fires, there was a Discourse of going further, and pulling down all the Meeting-Houses about the Town; but the original Intention was only to pull down some. If, at that first Fire, they should take a new Resolution to pull down another, that would still be a particular Injury; and so if they should carry it sever in for that way, it would not be High-Treason, otherwise than as it is an Evidence of a general Intention: But if the Fact were particular, though they took that Resolution twenty times one after another, yet it would not amount to High-Treason. But to bring it home to the Prisoner, to show that he was concerned in the Design, we submit it, that there is not such Evidence as is required to fix it upon him. The first Witness to that Point is *Grove*: He says there was a Man in a Livery, whether blue or green he can't tell: Sometimes he said it was green, sometimes blue, but being ask'd, he is not sure the Prisoner is the Man that he saw with a Banner encouraging the Mob.

If he can't be certain as to the Man, his Evidence can't be confirm'd by *Lord*, who only says, he saw the Prisoner's Confession; for they did not intend to use that Confession to fix the Overt-Act. And if it is not so, then *Grove's* Evidence is out of the Case. They would endeavour to support it by the Officer of *Nugate*, who carried *Grove* to the Prisoner; he says there was no other Man in the Room, and therefore it must be the Prisoner who was shew'd to *Grove*; and then, says *Grove*, The Man I saw in *Nugate*, I believe to be the same I saw at the Fire; so that it is altogether uncertain, as to *Grove's* Evidence. Then they call *Pitt*; he says he saw a Footman carry some of the Timber, and throw it into the Fire; and that he saw the same Man talk to *Lord*; and *Lord* is to support that Evidence, by saying, that the Prisoner came and talk'd to him; but *Lord* don't pretend that he saw the Prisoner do any thing. It is scarce to be believed, that *Pitt* should take Notice of his Features, so as to know him again, especially seeing his are not very remarkable; and there was no Light, but the Light of the Fire: And after all, he can't tell us any one Feature that is remarkable, nor did he take Notice of his Cloaths, or any thing remarkable about him. The Description of a Person is a constant Evidence that you meet with, in Case of a Robbery, or the like, you have the Description of the Colour of the Horse, or the Man's Cloaths, or some such thing; but he don't pretend to say one Circumstance to induce him to believe he is the same Man, but only that he is satisfied, for Reasons he keeps to himself. These are the only two Persons who have the least Colour to lay as Witnesses to any Overt-Act, and without these he can't be confirm'd; and there are to be supported by *Lord's*

* Mr. Justice Peck in his Reports, p. 248, says, "I think *Ferguson's* is the Case cited in *Willis's* Trial by the Name of *Bell's*."

Evidence, that the Prisoner told him they had made him a Captain, and that he had made Colours of a Curtain, and that they had burnt the Clock. We think the Act is not sufficiently proved by two Witnesses, and therefore can't be supported by a Confession, which is but a dangerous way of Evidence in all Cases, and a Man is not to be found Guilty upon a Confession, and for that Reason, the Statute takes Care, that two shall be two Witnesses to an Overt-Act. We therefore dissent it, that this Evidence is not sufficient to convict the Prisoner.

But, my Lord, the Prisoner's Case, we apprehend, is such, as will, in a great measure, excuse him from any Guilt, and we hope to satisfy your Lordship and the Jury, that he was not concerned in this Design, or in doing a trifling thing that were added to it. The Prisoner is a Servant to one Madam Allen, who lives in Great Street, near Hotten-Garden; he has lived there two Years, and has been, all that Time, a diligent Servant, and behaved himself well in the Family; and I believe, all the Assistance he has to enable him to make his Point, is owing to their Charity, which we think is an Argument of his good Behaviour, that his Master and Mistress will interpose, and endeavour to bring him off in a Thing of this Kind. It was the Fifth of March last, when this Information was all over the Town, and they came to Hotten, and with the Materials of a Musket-Ball they made a great Fire near this Lady's House; I think, about half an Hour after tea was the first Notice that they had at this House that there was a Fire: The Lady of the House was going to Bed, and as her Chamber they say to great a Light, that they thought the Fire was near; they called to the Prisoner, and he was going to Bed; they ordered him to go in, learn where the Fire was, he they knew not what sort of it was it: Upon that he went to learn what the Condition of it was. Then they served him, as upon this Occasion it is, and every body, they made them very Obsequious, as they call it, and hullo, and throw up their Hats. It seems to be supposed a man is really learns what the Design was, and where they had the Materials. As soon as he had informed himself, I think as shall show, that he got out of the Window as fast as he could, and was going home to acquaint his Lady; that as he was going home, he was told there was another Fire in Hotten-Garden; and in thinking he did not pursue his Lady's Intimations without learning what this was, accordingly he struck over the Way, and went into Hotten-Garden, and there found it was the same Design, and the Materials of another Meeting-House were brought thither, and burning. As soon as he had thus informed himself, he came to his Lady, and advised her, that the Mob was up, that they were pulling down the Meeting-Houses, and that he had seen two Fires. After he had given this Account, they ordered the Doors to be shut up, and the Family went to Bed, and after that, he was not out of the House. Now, as to the Fifth of the Banner, there is any Evidence to fix it upon him; And if we show, that he went alone from Hotten, in such he believed, that it was some other Footman, in some other Livery; for if he was there Captain, and carried the Colours upon a Pole, it was not his Beliefs, nor would they have suffered him to leave them there in Hotten, when they were going to make another Fire. It is pretty extraordinary to suppose him, that he could get a Pole to carry a Banner of that Kind. But if he was coming home by himself, without any Mob with him, sure it is pretty extraordinary that the Captain of the Mob, so considerable a Man as he, would go in to procure a Banner. We will call our Witnesses, and hope the Evidence will make a plain, that he did nothing but according to the Commands of his Mistress.

Then Mrs. Briggs was sworn.

Mr. Darnell. Pray, Madam, acquaint my Lord and the Jury, whether the Prisoner has lived in any time, and how long, with Mrs. Allen.

Mrs. Briggs. He has lived there two Years next Mo.

Mr. Darnell. In all that Time, how has he behaved himself?

Mrs. Briggs. A very civil, useful Fellow.

Mr. Darnell. Did you ever know him guilty of drinking, or flaying out at Night?

Mrs. Briggs. He has always carried himself very civilly.

Mr. Darnell. Pray, at the Time of this Disturbance, Do you know the Occasion of his going out?

Mrs. Briggs. I was in my Mother's Chamber while she was going to Bed, and I saw a Fire, and heard a great Noise, I called to my Sister, who was below, and bid her find Frank to know what the Matter was.

Mr. Darnell. Did he go accordingly?

Mrs. Briggs. Yes.

Mr. Darnell. You say you both sent Frank; Who do you mean by that?

Mrs. Briggs. I mean the Prisoner at the Bar.

Then Mrs. Allen was sworn.

Mr. Darnell. Madam, you said what Mrs. Briggs said, that she desired you to find Frank, the Prisoner, to find what the Matter was. Did you send him?

Mrs. Allen. My sister called on me, and said, she believed there was a Fire in Hotten, and bid me find him to see, which I did.

Mr. Darnell. Pray what time was this?

Mrs. Allen. It was past Ten, the Clerk had struck before my Mother went up.

Mr. Darnell. How much after Ten might it be?

Mrs. Allen. Indeed I can't tell; but I am sure it was past Ten.

Mr. Darnell. What Time was it before he came back?

Mrs. Allen. I believe the Clock had not struck Twelve, to the bell of my Mother.

Mr. Darnell. What Account did he give you when he came back?

Mrs. Allen. I did not see him that Night.

Mr. Darnell. What did he say next Day?

Mrs. Allen. He said they had burnt the Meetings; I asked him if he had done any thing? He said, nothing to harm him.

Mr. Darnell. Where is Mrs. Allen's House?

Mrs. Allen. In Great Street, the Back of our House looks into Parliament Street.

Mr. Darnell. Had not you the Curiosity to know what Account he brought?

Mrs. Allen. I was not below, my Sister was.

Mr. Darnell. How came you to ask him, Whether he had done any thing?

Mrs. Allen. Because next Day he had Notice given him, that I was intended to swear against him: At Supper I saw both look very dull, and

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having heard of this in the House, I asked him if he had done any thing to occasion it? He said, No, indeed.

Mr. Darnell. How long was it before he was taken up?

Mrs. Allen. It was Twelve or Night.

Mr. Darnell. I would ask Mrs. Briggs, Pray what Account did he give you?

Mrs. Briggs. I can't be particular as to that; but only that they had burnt the Meeting-Houses, but he did not say that he had helped to do it.

Mr. Darnell. About what o'Clock was it when he came home?

Mrs. Briggs. To the best of my Knowledge, the Clock had not struck Twelve.

Mr. Darnell. Was not you impatient at his staying so long out?

Mrs. Briggs. It was not full two Hours.

Mr. Darnell. Did you not ask him why he staid so long?

Mrs. Briggs. I was angry that he staid so long: I think he said, he never saw a Mob in London before, and to my Knowledge he was not in any of the Mob before.

Mr. Darnell. Did he give no Account what was done there?

Mrs. Briggs. I don't remember he did.

Mr. Darnell. Did he give you any Account of the Captain he carried?

Mrs. Briggs. I don't remember any thing, my Lord.

Mr. Darnell. That is a pretty remarkable Thing.

Mrs. Briggs. I heard afterwards of a Captain.

Mr. Darnell. When did you hear of it?

Mrs. Briggs. When he was before the Justice.

Mr. Darnell. Did you see any more Fires than one, when you went him out?

Mrs. Briggs. No, my Lord.

Mr. Darnell. What was the Fire to be?

Mrs. Briggs. I thought it was in Hotten.

Mr. Darnell. Did you hear of any Fire in Hotten-Garden?

Mrs. Briggs. Yes, afterwards I did.

Mr. Darnell. But you did not know of any there when you sent him out?

Mrs. Briggs. No, my Lord.

Then Mary Hodges was sworn.

Mr. Darnell. Do you know the Prisoner at the Bar?

Hodges. My Lord, he is my Fellow-Servant.

Mr. Darnell. What time of Night was it when your Mistress sent him out?

Hodges. It was past Ten.

Mr. Darnell. What was he sent for?

Hodges. It was to see if there was a Fire in Hotten.

Mr. Darnell. Then the Fire was burning before he went out?

Hodges. Yes, my Lord.

Mr. Darnell. How long had it been burning?

Hodges. I can't tell; my Mistress was going to Bed about Ten, and one of the young Ladies saw the Fire, and call'd out to him to go and see what it was.

Mr. Darnell. Was you there when he came back?

Hodges. I was not there; for I had a Relation that was ill, and my Mistress gave me Leave to go and sit up with her.

Then Elizabeth Elliot was sworn.

Mr. Darnell. Do you know the Prisoner at the Bar?

Elliot. Yes.

Mr. Darnell. Do you remember the Night the Fire was in Hotten?

Elliot. It was St. David's Day.

Mr. Darnell. Was he sent out that Night?

Elliot. He was sent to see the Fire at Hotten; my Lady sent him to see if there was a Fire.

Mr. Darnell. Did he go out for that?

Elliot. Yes.

Mr. Darnell. Was you there when he came back?

Elliot. Yes; I let him in.

Mr. Darnell. When he came back, what did he do? Did he go to Bed?

Elliot. Yes.

Mr. Darnell. What Account did he bring of the Fire?

Elliot. I don't know what Account he brought of it.

Mr. Darnell. Was you up when he came home?

Elliot. Yes.

Mr. Darnell. What o'Clock was it?

Elliot. The Clock had not struck Twelve.

Mr. Darnell. You can't remember, it may be, the whole Account he gave when he came back; but do you remember nothing of it?

Elliot. No.

Mr. Darnell. Not a Word?

Elliot. No.

Mr. Darnell. Was he not asked how he came to stay so long?

Elliot. No, not in my Hearing.

Mr. Darnell. Were your young Mistresses going to bed, as well as the old one?

Elliot. No; they staid up till he came in.

Mr. Darnell. But were they designing to go to Bed before he went out?

Elliot. Yes; we were going to Bed presently.

Mr. Darnell. Well then, When you had staid up so long as Twelve, were there no Questions asked how he came to keep you up so long?

Elliot. The Ladies asked him, what made him stay? He said, he never saw a Mob before.

Mr. Darnell. But I suppose he told you what Diversions he had had there?

Elliot. No; I did not hear him say any thing of it.

Mr. Darnell. He told you nothing of the Fire, or the Colours?

Elliot. No; nothing.

Mr. Darnell. Did not the Ladies ask what that Fire was?

Elliot. Not as my Hearing.

Mr. Darnell. Was it strange he should be sent out to enquire about the Fire, and not be asked any thing about it. Was no Enquiry made of the Mob and he was sent about?

Elliot. Not in my Hearing.

Mr. Darnell. Had you no Discourse with him?

Elliot. No.

Mr. Darnell. Did you talk nothing of it the next Day?

Elliot. No.

Mr. Sol. Gen. Did he give no Account the next Day, or at any Time after, of what passed?

Eliz. No, not in any Hearing.

L. C. J. What Cloaths was he in that Night?

Eliz. He was in his Livery.

L. C. J. What is his Livery?

Eliz. It is blue, with black Buttons, and trimmed with black.

Then Mr. Pryor was sworn.

Mr. Darnell. Pray acquaint my Lord and the Jury, whether you saw the Prisoner at the Bar, any Time at the Fire in *Holborn*, and before that in *Hatton-Garden*?

Pryor. As I was coming down *Holborn*, I had been at *Wyblyngier*; I came to *Leather-Lane* End, and there I light of the Prisoner at the Bar.

Mr. Darnell. Where was you going?

Pryor. I was going Home to *Chickwell*: I saw *Willis* in *Holborn*: He came out, Who comes there, *Mr. Pryor*?

Mr. Darnell. Where was *Willis*?

Pryor. He stood at the End of *Leather-Lane*, and he and I walked down together along *Leather-Lane*, to *Grosvell-Street*. He told me he lived there with *Mrs. Moll*. I asked him, Shall we drink a Mug of Beer? With all my Heart, says he; but my Lady has written out to let what the Master is. So we walked talking together, as far as *Brook-Market*; and there were a great many People hallooing for High-Church and *Brookwell*; so we parted there, and did not go on to drink, because there was a great Mob about.

Mr. Darnell. You say he parted from you to go Home; Was any body with him?

Pryor. No.

Mr. Darnell. Was there any Curtain, or Colours, or Stick?

Pryor. No.

Mr. Darnell. Was there any body, or any Mob, that claimed him as their Captain?

Pryor. No; I saw Nobody speak to him.

Mr. Darnell. Did you afterwards go to the Fire in *Hatton-Garden*?

Pryor. They were just going to light it.

Mr. Darnell. What were they doing at the Meeting-House in *Leather-Lane*?

Pryor. They were pulling it down, and carrying it to *Hatton-Garden*.

Mr. Darnell. Did the Prisoner carry any of it?

Pryor. I did not let him carry any.

Mr. Sol. Gen. What Time of Night was this?

Pryor. It was Eleven, or thereabouts, I can't tell whether it was over or under.

Mr. Sol. Gen. At which End of *Leather-Lane* did you see him?

Pryor. In *Holborn*.

Mr. Sol. Gen. Was not the Way you walked with him, as well the Way to *Hatton-Garden*, as to *Grosvell-Street*?

Pryor. It was his Way as well to the one as the other.

Mr. Sol. Gen. Did you leave him standing in the Street, or how did you part?

Pryor. We shook Hands, and he said, I must go and tell my Lady how it is.

Mr. Sol. Gen. What Time of Night was it?

Pryor. As nigh as I can guess, Eleven o'Clock.

Mr. Sol. Gen. Where did you part?

Pryor. Directly over-against *Brook-Market*.

L. C. J. Where did you tell him?

Pryor. At *Holborn*, at *Leather-Lane* End.

L. C. J. Where was the Fire?

Pryor. Almost over-against the End of the Lane.

L. C. J. What was he doing?—*Pryor.* Nothing; only stood to look on.

L. C. J. Then you went with him up *Leather-Lane*?—*Pryor.* Yes.

L. C. J. Where did you part with him?

Pryor. At *Brook-Market*; we walked to far, and talked of drinking together; but when the Mob were hallooing, and making such a Noise, we did not go in to drink.

L. C. J. Where did you talk of going in to drink?

Pryor. He did not name any Place, and I was a Stranger there.

L. C. J. How came you to walk so far as *Brook-Market*?

Pryor. I don't know; we were talking of several Things in the Country.

L. C. J. How came you to be out so late?

Pryor. I had been carrying some Glass to *Wyblyngier*, and was going Home again.

L. C. J. How did he give you any Account of the Fire in *Holborn*?

Pryor. He talked nothing of the Fire.

L. C. J. How far was the Fire from the End of the Lane?

Pryor. Just at the End of it.

L. C. J. How did you see any Thing of the Fire?—*Pryor.* I did see it.

L. C. J. How did he say he had been there?

Pryor. No; but he said his Lady sent him to see where it was.

Mr. Tinsley. You said he was going Home, and afterwards you say you went to *Brook-Market*; is that between *Leather-Lane* and *Grosvell-Street*, or not beyond it?—*Pryor.* It is beyond it.

Mr. Tinsley. How came he then to go beyond *Grosvell-Street*, in order to go Home to his Mistress?

Pryor. We are talking of Country Affairs.

Mr. Darnell. We shall call a Witness to prove, that after *Grew* had been at *Norgate* to see the Prisoner, he declared he did not believe him to be the same Man.

Then Stephen Fletcher was sworn.

Mr. Darnell. Had you any Discourse with *Grew* after he had seen the Prisoner in *Norgate*?

Fletcher. *Winn* came from *Norgate* on *Good-Friday* at Night, and had been to see the Prisoner; I asked him what he said to him? Nothing, says he; for he was not the Man that carried the Curtain; for the Man that carried the Curtain had a green Coat and brass Buttons.

Mr. Sol. Gen. At a year's Acquaintance, did *Winn*?

Fletcher. Yes; I live in the same House.

Mr. Sol. Gen. Was *Grew* at *Norgate* at Night, after he had been at *Norgate*, that he told you this?—*Fletcher.* Yes.

Mr. Sol. Gen. Did you see him any farther about the Prisoner, or did he tell you of himself?

Fletcher. He told me he had been at *Norgate* to see *Willis*; *Winn* I asked if he said any Thing? He said no; that is not the young Man that I live with the Curtain.

Mr. Darnell. The Account I have of *Grew*, is, that he was a Tradesman, and broke, and now lives by Gaming.

L. C. J. If you have any Thing to examine to his Reputation, you will do well to call your Witnesses to it. *Grew*, what do you say to this? *Grew.* When I came from *Norgate*, I thought it was the Man; and I told him so, such Things; I told every body I spoke with, that I believed it was the Man.

L. C. J. Did you tell him that you believed the Man that had the Curtain was a green Coat?—*Grew.* No, not that Night.

Mr. Darnell. Did you tell him so at any Time?

Grew. Yes; but that was the *Wednesday* Night; but when I went to *Norgate*, he had a blue Coat, but I always believed him to be the same Man.

L. C. J. Did he tell you he had a green Coat on that Night he had been at *Norgate*, or before?—*Fletcher.* It was before.

L. C. J. I understood you, that when he came back from *Norgate*, he told you he had nothing to say to this Man, for that the Man that had the Curtain had a green Coat and brass Buttons?

Fletcher. He said he could not be positive, for that *Mis* had a green Coat and brass Buttons.

L. C. J. Did he tell you that Night that he had a green Coat and brass Buttons?

Fletcher. I can't tell whether it was that Night.

Mr. Darnell. You say once he told you he had a green Coat and brass Buttons: What did he say when he came from *Norgate*?

Fletcher. He said he could not be positive, for that it had a blue Coat on.

Mr. Justice Tinsley. Did you, after you came from *Norgate*, say, you could not be positive he was the Man?

Grew. I did tell him I could not be positive.

Mr. Tinsley. Did you tell him you believed him to be the Man?

Grew. Yes, I said I did believe it, but I would not swear it was he.

Then Hylgate was sworn.

Mr. Darnell. We call him, to show that at the Fire there was a Man in a green Livery, who was very active there: Pray tell us, Was you at the Fire in *Holborn*, and who did you observe there?

Hylgate. My Lord, about half an Hour after Ten I was at a Neighbour's House; I heard there was a Mob, and the Meeting-Houses were burning; upon that I went from thence to my Wife, and told her the Meeting-Houses were pulled down, and burnt in *Holborn*; if you will go, I will let what they are doing. There I saw a great many Boys breaking Wood and Boards, and throwing them into the Fire: And at the Fire I saw a Footman in a green Livery and red Buttons, and red Stockings; I saw him jumping, and very jolly. I will not be positive that he is our Neighbour's Footman that is gone off; but I did see a Footman in a green Livery at the Fire in *Holborn*, at *Leather-Lane* End.

Mr. Darnell. What did you see him do?

Hylgate. I saw him jumping and waving his Hat.

Mr. Darnell. What Sort of Man was he?

Hylgate. Much such a Sort of Man as the Prisoner.

Mr. Darnell. Did you know the Footman that is gone off?

Hylgate. Yes.

Mr. Darnell. Did you see the Prisoner at the Fire?

Hylgate. No; I am sure I should have known him, if I had seen him.

Mr. Darnell. Did you say any more at the Fire in *Holborn*?

Hylgate. I did not say two Moments, but went up to *Hatton-Garden*, and there I saw a great many with their Clubs and Staves, crying out *Brookwell*; one gave me a Stroke on the Head, and asked me, Why I did not pull off my Hat?

L. C. J. Why should you know the Prisoner at the Bar, if he had been there, and not know the Man in Green, who was your Acquaintance too?

Hylgate. My Lord, I was at a Distance.

L. C. J. Would not the same Distance have hindered you from knowing the other?

Mr. Darnell. My Lord, I desire to call a Witness or two to the Manner of Life of this *Grew*.

Then Thomas Clark was sworn.

Mr. Darnell. Do you know *Mr. Grew*?

Clark. I have known him many Years.

Mr. Darnell. What was he to *Clark*? He kept a Baker's Shop.

Mr. Darnell. What became of him?—*Clark.* He broke.

Mr. Darnell. What became of him afterwards?

Clark. He went forthwith down to the Water-side, to some Place, but what it is I don't know.

Mr. Darnell. What does he do now?

Clark. I can't tell, but they say he works with his Uncle: I know nothing of him; but he never had a good Character in his Life.

Mr. Darnell. How does he employ himself?

Clark. He is given to playing, as I have heard say.

Mr. Darnell. Do you know any Thing about *Willis*?

Clark. No, indeed, I never took much Notice of him: But for the Prisoner, I have known him two Years, and never saw any more of him in my Life.

Then Ward was sworn.

Mr. Darnell. Do you know this *Grew*?—*Ward.* Yes.

Mr. Darnell. What do you know of him?

Ward. He was a Baker in *Hatton-Garden*; I know him several Years: I know him to be a Gambler.

Mr. Darnell. What Influence can you give of his Gaming?

Ward. He has played with me two Years.

Mr. Darnell. How often?—*Ward.* Not very often.

Mr. Darnell. What do you know of his Play? Does he live by it?

Ward. I can't tell whether he lives by it or no; but he has been by relation a great Gambler.

Mr. Darrell. Do you know of any body's Servant that suffer'd by him?

Ward. No.

Mr. Darrell. What Sort of Games did he play at?

Ward. At Dice.

Mr. At. Gen. Do you reckon yourself a Gamester?—Ward. No.

Mr. At. Gen. Did you ever know that Man play with any but yourself?

Ward. Yes, at the Bell Tavern in Gray's-Inn-Lane.

At. At. Gen. How often did you know him play there?

Ward. But once.

Mr. At. Gen. How long ago was that?

Ward. I can't tell how long; another time he play'd at our House in Hatfield-Garden.

Mr. At. Gen. How long ago was that?—Ward. I can't jolly tell.

Mr. Darrell. Do you know the Professor?—Ward. Yes.

Mr. Darrell. How long have you known him?—Ward. Two Years.

Mr. Darrell. How has he behaved himself?

Ward. A very honest young Man as can come into a House, by all relations that I ever heard of him.

This Examination was over.

Mr. Darrell. Do you know the Professor?—Farrington. Yes.

Mr. Darrell. How long have you known him?

Farrington. I know him when he lived in Chancery-Lane.

Mr. Darrell. What do you know of his Behaviour?

Farrington. A very civil young Man, he used to fetch Drink at my House; I never heard him swear, or knew him guilty of any ill.

The Mr. Miles was sworn.

Mr. Darrell. Pray, Sir, what Account do you give of the Prisoner?

Mr. Miles. He has lived in our Family two Years: He has always behaved himself well, and soberly, and was addicted to no ill.

Mr. At. Gen. Was you at home that Night?

Mr. Miles. No, I was out of Town.

Mr. At. Gen. When did you return?

Miles. The Sunday following.

Mr. Darrell. My Lord, we will not trouble your Lordship with any more Witnesses; we hope we have well accounted for the Time he was out of his Master's House, for that seems to be all that sticks upon him, that he being out to long might give room for him to be concerned in this Tumbrel: But by the Witnesses it appears, that the Conspiracy of raising a Mob, which he had never seen before, might take up some Part of his Time; and the two Years being so near, that he could not go from one, without seeing the other, engaged him to go in to them both. I here use a round way that met him, such when he walk'd up and down the Street in Henry, but we think it throws that he was a Ring-leader, or sower of sedition in pulling down the Meeting-House, for that we see says, they were then carrying the Materials, and the Fire was lighting, at the Time when they were together; and that he perked with him, in order to go home, but his Conscience carried him so far that Fire that was then lighting, that he might carry an Account of it.

But upon the main Question, we must humbly insist, that there is no Evidence to fix it upon the Prisoner. There are not two Witnesses to any Overt-Act for the same Treason, nor do those Witnesses ascertain it to be the Prisoner's for that time it appears a hole plank, that his first Charge was against a Footman in a green Livery: He declared it was a Footman in Green with Black Buttons; and when he came to Negate to be this Man, he believes him to be the same Man; that is the most of his Evidence, but when he came back then to his Conscience, that he lived in the House with, he believed it was not the same Man, and he could not swear it was the same Man, because he had a blue Coat; and now he would carry his Belief so far as to believe, that he then had a blue Coat, with black Buttons; and surely, Nobody could mistake a blue Coat with black Buttons, for a green Coat with black Buttons: Whatever may be supposed of the Colour of Blue by Fire-light, altering by that Light towards a Green, yet it can't turn Black Buttons into Blue ones.

Supposing the Person whom Greve pretends to accuse were here, yet there are not two Witnesses to any Overt-Act, for it is only confirmed by the Confession which is proved by Law; but we hope the Prisoner is not the Person that had the Colours, and therefore there is no Evidence to fix it on him guilty. We can't differ from the Reflection in the Books in Mr. Rogers's Case, much less with your Lordship's Reflection Yesterday; but the Case is entirely different between the Waterman and this Man, for there it did appear that he earned the Branch, and threw it into the Fire, then at that place, he balloted, and led a Party, and offered to be their Captain, to destroy Law, and in that manner he took upon him to lead them, and did lead them; but there is not any one Instance of that Nature here, there is not any one Witness that proves him to be in a Meeting-House, or to have done any thing there, or to have gone from one to another. It is not as if he had join'd with them at the Bell Tavern, and gone to work there in what they were doing, yet we must insist, that it could not make him Guilty of High-Treason. In the Case in King Charles the Second's Time, we saw against them were all in the Design, the Verdict is made that they assembled, that they arm'd themselves, that they chose a Captain; that when the Government thought fit to interfere to suppress them, they Arm'd at the Church, threw Stones at the Captain of the Guards, against their Relations of going to the Court, and there's what their Intent was; but no Design is proved against this Man, and nothing to make it agree with that Case: But these Persons that were by all the Judges acquitted from that Treason; we think the Evidence was much stronger against them, than what is offered against this Man: For in the Case of *Reade*, he was proved to be among them, and when the Officer persued him, he turn'd about, and cry'd to the People to face about, and not to leave him: And though it appear'd he was in the Design, and call'd to the rest to assist in his Defence, yet he was agreed not to be guilty of High-Treason, because he was not aiding in pulling down the Houses; which in those Matters wherein the Judges gave their Opin-

ions, made it High-Treason. But as to Greve in the full special Verdict, and *Reade*, they agreed, the Verdict was not full enough to convict them.

L. C. J. The Jury found the Evidence, but did not find the Facts which might have arose from that Evidence; but if they had found, as the Conscience of that Evidence, that they were doing and aiding, they would have been Guilty. And though the Court thought there was Reason for the Jury to have said so, yet they not having said so, the Court could not say it for them.

Mr. Darrell. My Lord, we say there is no Intention proved against him, nor aiding in doing that which is the Crime, as pulling down the second Meeting-House: And as for the first, that was well known, and burning, before he came, so that he could not assist in that.

Ward. I desire Law may be asked, if he saw me carry any thing to the Fire?

Law. I did not see him carry any thing.

Ward. Did he see any of the Mob take Notice of me?

Law. There was Nobody with him, and that took Notice of him. He went from the Fire, after he had spoke those Words, very quietly.

L. C. J. Father. Was you by Mr. Law when you saw the Prisoner carry the Timber?

Father. He was within the Shop, I believe.

L. C. J. You told us, that you saw several People in the Meeting, breaking it down: Did you see the Prisoner there?

Father. No, I did not.

L. C. J. Pray, whence did he bring that Timber that you saw upon his shoulders?

Father. I can't tell that.

L. C. J. You did not see him bring it out of the Meeting-House, did you?

Father. No, I did not.

Mr. At. Gen. Mr. Law, Was Father by you when the Prisoner spoke to you?

Law. He stood lower than me; We fill'd up the Door-way: My Hand was on the Side of the Door. Every now and then the Mob would strike at me, as they went by, and were carrying the Wood from the Meeting to the Fire; they would Huzzas, and cry, You Dog, who are you for?

Mr. Father and I stood to about half an Hour: I stood there before the Fire was lighted, and till the Grass was cut.

Mr. At. Gen. How often did you see the Prisoner during that time?

Law. But once, and that was when he spoke those Words to me.

Mr. At. Gen. Was Father by you then?

Law. Yes, of the Side of me.

Mr. At. Gen. Then sit up Father again. Pray Sir, about this Timber: You say you saw him with some Timber on his Back; Who was by at that Time? Was Law by?

Father. I don't know whether he was at the Door, or in the Shop.

Mr. Thynne. Was he coming that Way from the Meeting with the Timber?—Father. Yes.

Mr. Darrell. Can you take it on your Oath, that the Man that spoke to Mr. Law was the Man that carried the Timber?

Father. No, I can't.

Mr. At. Gen. My Lord, we think the Proof is sufficient; and notwithstanding any thing that has been said by the Counsel for the Defendant, it stands unimpaired, and it is clear, that the Prisoner is Guilty of this Treason.

The Evidence of both Sides makes it appear, that upon this Day there was an Infurrection of the People, in order to pull down the Meeting-House, and that they executed their Design by pulling down several at that Time. Mr. Darrell don't deny but that, in point of Law, all those People were gathered together, to execute this Design, and equally Guilty of High-Treason: So that the Question is only, Whether this Prisoner was one of those People that were gathered together? That which he insists upon is, that though this Man was there, yet no Proof is made that he was aiding towards the carrying on this Design; therefore we think what our Witnesses say is sufficient, and not impeach'd by what was said of the other Side.

The first Witness that we call'd, though he was not acquainted with the Prisoner, yet he says, there was a Man in a blue Livery, that he could not but take Notice of it, and that when he went to Negate, to tell the Prisoner, he took him to be the same Man that carried the Colours; and though he can't be so positive as to swear directly, yet he says he met it in the same Man, though he can't be so positive.

I am sure I should be very far from proving any thing similar to the Nature of the Evidence will bear, therefore I hope I don't misrepresent what he says: Therefore it leaves it somewhat uncertain yet, whether the Prisoner as the Bar was the Man that carried those Colours? But that which puts this out of Dispute, and makes it clear that this is the Man, is Law's Evidence, who now appears not to be an Enemy to the Prisoner. He tells you, that last Night the Prisoner told him, that they had made him Captain of a Party that Night; that he had made Colours of a Curtain, and that he had burnt the Clock. Now it is very strange, that if he was not concerned in carrying this Curtain, that he should talk of a Curtain and Colours, and say, that he had made Colours of a Curtain. If he was not the Man, it is unchangeable he should, when as how after he was observed by our Witnesses, say, that he was the Man they had chosen, and that he had made a Colours of a Curtain; and that they had burnt the Clock. It is not to be imagined he would have said such a thing, if he had not been the Man that the others saw carrying it; therefore, putting these two Witnesses together, (who are Persons that no ways appear to be concerned to bring this Man to Justice more than any other) and it makes it plain and clear, that this is the Man that burnt the Colours. It is, then it is plain this is one Evidence, and I agree, it is necessary that there should be another Witness to prove this Fact, and the Testimony of our Witnesses will not be enough, therefore we have produced Father, that previously knew this Man. He says, he saw him with a Piece of Timber on his Shoulders; that he saw him throw it into the Fire; and that he saw that Man go afterwards and speak to Law, and Law told him who he was.

It is of Consequence to all Governments, to make every Body, that is any ways adid in these Disorders, equally guilty; for it is impossible to say who begins in these Cases: You may know who carries on these Things, but you can't tell who begins them; therefore it will not be sufficient for them to say on, that he was sent by his Mistress at that time, for that it all that was proved, that he was sent out for where the Fire was, and his being sent out for that Purpose will not make him the less Guilty, if he did join with them, and aid them in what was done: For if Men are met together to do an unlawful Act, and those that don't know it join with them, they are Guilty; therefore whether he knew of that Meeting, or was only sent by his Mistress, yet if it is proved that he did join, and aid and assist those that were engaged in that Treason, he is equally Guilty. As to what was said by *Prier*, who was his Companion, that appears to be just as having been sent out by his Mistress to enquire: He told this Man, that he was sent out to get Intelligence, but you see, that though he was asked to stay and drink with this Man, he would not, but left him, and what he did then, he could not tell, it is therefore likely that he afterwards went to this Bedchamber that he was afterwards unhappily engaged in.

As to what they insist on, that they have called Witnesses to invalidate the Testimony of *Grove*, that he made some Mistake about the Colour of his Cloaths, that is no great Matter to be relied on, for blue and green, by Candle-light, are pretty much of the same Colour, especially at a distance View; but you for the View he had was sufficient to know his Face, but the Light of the Fire occasioned another Cast upon his Cloaths, therefore his thinking it to be green when it was Blue, will make no Difference: And though he don't speak positively, but speaks with Caution, and not as a Man would do that was produced, and came to take away a Man's Life: Though he says he can't positively say this is the Man, yet he says he does really think it is. As to the *Witnesses* that prove he had a Menstruant, and broke, that may be many an honest Man's Misfortune to fall in a Way of Trade: I don't find that they do impeach his Credit at all: Though they talk of his playings, I don't find but one Man that has seen him play, and most People do some time or other: I don't find that he has swerved, or done any thing foul; but we must believe the Matter of Fact to the Consideration of the Jury: I believe the Matter of Law is agreed. I believe there was a Noncon in the World, that it was only a Riot, for which they might be fined, and the like, but the Law is now agreed; and as to the Fact, we must submit it to your Lordship's Direction.

Mr. Ser. Gen. I think *Mr. Danell* does agree that if there was a general Intention to pull down Meeting-Houses, it would be Rebellion and High-Treason. I take it, that it was so, as is fully proved as it possible, by having so many pulled down, and by such a Multitude of People as were got together for that Purpose: For it can't be thought, that the People that were at one House intended to pull down that one, and those that were at the other Houses intended to pull down them only; but it must be a general Intention to pull down Meeting-Houses in general; we think, therefore, the general Intention is proved, therefore what *Talbot* says don't confute it: For though he says, what they declared was only in regard to *Mr. Burges's* Meeting-House, yet that don't take off from the Evidence of what pulled the next Day, when the several Meeting-Houses were pulled down, and the Fact, without that Evidence, shows the particular Intention; and the Mob that were at *Lincoln's-Inn-Fields*, afterwards, damn them, they would have them all down, and accordingly they went away to another, and pulled that down; therefore, that there was a general Intention, is sufficiently proved, and that this Man did act in that Intention. We think it is sufficiently proved, that he was at two of them; but if it had been but one, it had been the same Fact. But they object, that this is not a legal Evidence; for, say they, the Statute requires it, and says, that no Confession can be given in Evidence, and the Evidence of *Last*, without it, will not do; and *Grove's* not swearing positively to the Man, without the Help of *Last*, will not be a legal Evidence, so as to prove an Overt-Act. This is the Strength of the Objection in Point of Law, and God forbid that we should insist on any thing but what is legal Evidence: It is Justice to him, not to offer any such thing, as it is to the Crown, to insist on what is legal Evidence, to bring him to Punishment. The Words of the Act are, That no Person shall be indicted, tried, or attainted of High-Treason, whereby Corruption of Blood may be made, or of Misdemeanor of such Treason, but by the Oaths and Testimonies of two lawful Witnesses, either both at the time Overt-Act, or one to one, and the other to another Overt-Act of the same Treason, unless the Party willingly, in open Court, confess the same, &c. Now in this Case, here are two lawful Witnesses. *Grove* is a lawful Witness, he is capable of being a Witness; whether what he says is sufficient for the Proof of the Facts, must be left to the Consideration of the Jury. If there are two legal Witnesses, to which there are no legal Objections, it is sufficient; whether what they swear is sufficient to prove the Fact, is of another Consideration; but there is no such Word in the Act to restrain a Confession from being given in Evidence: He shall not be convicted on a Trial, without two lawful Witnesses; that is the Thing that is provided for, and it was to exclude a Precedent that had been settled in *Yew's* Case, in my Lord Chief-Justice *Kings's* Reports, as Evidence of Confession only, that was proved by two Witnesses, and that was the Occasion of making this Law, that his Confession alone should not be sufficient, without an Overt-Act. This was the Reason and Ground of making that Act in Parliament, but it was not designed to exclude all Confession. That was Evidence at Law, and always must be: That Evidence that comes out of a Man's own Mouth, was always allowed. The Design of the Act was to exclude Confessions from having the Force of a Conviction, unless it were in a Court of Record, and to prevent a Confession proved by two Witnesses, from being a sufficient Ground for a Conviction. A Confession is a considerable Evidence, and in many Cases clears a Thing beyond Contradiction; and in this Case it shows how necessary it is, for where Things are transacted in the Dark, and it

is impossible for Strangers to see, the Declaration of a Person is nearly the Confession of a Man himself, and must have a great Weight in the World, and the most Satisfaction. I mention here a lawful Witness, and not clear of that Objection: How can two Witnesses be at the time of the Evidence of *Last* is not necessary, but two Witnesses at the time of the Evidence of *Last* is necessary.

This being the State of the Matter, How stands it then? It is agreed he was at the Bedchamber in *Halifax*, he was sent out for that Purpose: The Fire was seen at his Mistress's House, and he was sent out to enquire about the Matter. That there was a Man there in a blue Livery, is proved by several People, and it is proved that he had a blue Livery. *Grove* saw a Man, he can't tell whether he was in blue or green, with a Menstruant, in *Halifax*: He says, he don't know whether it was in blue or green, but he took him so he was at that Size, and he supposes him to be the Man. But here is a Doubt, whether this is the Man that created the Standstill, and how it was cleared? Now this, with a Menstruant, is cleared by the Man himself, if that be Evidence, which we must upon it do. This Declaration is true, that he had made Colours of a Coat, and that he was chief Captain of a Party, that does explain it, and is not answered by any thing they have offered to the contrary. As to his being in the Tunnel in *Leather-Lane*, *F. de* fears, that he saw him with a Piece of Timber on his Shoulder, and that he carried it, and threw it into the Fire, *Last*, as to every thing he speaks, is clear: He proves that he spoke some Words to him; and as to what *Talbot* says, he is as clear, that he had the Wood, and threw it in. Two only Questions then will be, Where he had this Wood? Whether he had the Wood which he threw into the Fire, made of the Materials of the Meeting House, from any other Place? They give you some Evidence, that he was going home quietly, and that they carried about *Elizabetta at Bristol's* House; that it is plain, he did not go home 'till 'till Twelve, for so all the Family agree; in that that Time is to be accounted for, that he might have spent at this Bedchamber, and in the Tunnel. There is another Man to answer the Belief of what they call the High Church Standard: He says, there was a Man in a green Livery which he saw, and thought he knew him, but could not be positive, because he was at a Distance; but if it had been this Man, he believes he should have known him; but there is a little Reason for him to know the one or the other. The Man in the green Livery, he says, is a raw boy, but he says nothing as to the Hair Barrow; and it is easy to mistake between green and blue.

I shall not urge the Evidence further than it is reasonable; there are Circumstances which will be under the Consideration of the Jury. But supposing the Man to be concerned in this Manner, adding as the Queen's Evidence have proved, it will be High-Treason within the Gate in my Lord *Kings's* Reports, and is not diminished by what *Mr. Danell* offered. He says, there was leading and arming, and they struck at the Guards; so here was leading, for Nobody denies but they had a Standard: The only Question is, Whether the Prisoner carried it? And is the other Mob in *Lincoln's-Inn-Fields*, they were led, and hallooed away to *Leather-Lane*, and as to the Gate of *Black's*, which he would swear it so, there was no Act that was done by him; besides, the Verdict was defective, in not finding the aiding and assisting; for though they found the Facts, yet they did not draw the Conclusion from those Facts. As to what has been said to the Reputation of *Grove*, I don't find it any ways affects him; it is not proved that he has charged, or that he is a common Gambler, or that he Eves by that Way. As to the Reputation of the Prisoner, there may be many honest Men that might think they did Service at this time, and he might be desired among the rest; but that is an Argument why he should not be concerned in the Fact: Whether he was or not, is what we must submit to the Consideration of the Jury.

Mr. Thynne, My Lord, as to the Matter of Law, it has been fully spoken on, and that the Intention was general, is proved; the only Question is, Whether the Prisoner was aiding, and so proved in a legal Manner? I will only say how much Overt-Act is proved: The first Act is his going with a Piece of Wood on his Shoulder, and throwing it into the Fire. That *F. de* swears positively, I said, Whether he was coming with it as from the Meeting-House? and he said he was. As to that, it is plainly sworn upon him as to the Man.

The other Overt-Act is from *Grove*; there is indeed some Uncertainty as to the Person, *Grove* was not indeed very positive; he did observe a Man at the Fire, he could not say whether he had on a blue Livery or green, but when he went to *Ninny* to see the Prisoner, he did say he believed him to be the Man. Indeed they pretend that he said something contrary to his Companion, but all he said then was, that he could not be positive, but he did say, he believed him to be the Man. Now there being this Uncertainty, what do we call *Last* is his Confession? If we call him to prove the Overt-Act by his Confession only, there might be some Colour to object to it: But the Fact is proved to be done by *Grove*, and we call *Last* only as to the Identity of the Person. He only explains what *Grove* had sworn before: He swears the Colours were displayed, and the Confession is only as to the Identity of the Person. As to the Reputation of *Grove*, they did endeavour to aspers him, but I think they could not make any thing out: They don't pretend to prove any Matter in him; say, he is the rather to be credible, because he will not be positive. If he had said any Mistake, he would have sworn positively, but you see he will not be positive.

Something was mentioned that there was a Man in a green Livery there, from whence they would infer, that he was the Man that was this Instrumental, and that it was not the Man in the blue Livery; but that can't be, because he had red Buttons and Struckings; in that that seems not to have much in it. They pretend to account for him as if he was not there, when *Prier* says he met him at Eleven, but he did not go home 'till Twelve: So that we think having thus proved by *Prier* positively, by *Grove* thus circumstantiated in this Manner; the Man's Con-

clusion

effion coming afterwards by East, which does him to be the Man that did the Fact, we think it brings it home to the Prisoner. But we submit it to your Lordship and the Jury.

Mr. Greville. My Lord, as to the Matter of the Confession, I think what *Mr. Sallis* has Generalized, by way of Answer, will lay aside the Statute of King *William*, for it is, in Effect, to say, that if the two Witnesses to an Overt-Act are uncertain as to the Person, his Confession must fix it upon him. If two Witnesses will swear that a Man in a blue Coat did commit High-Treason, but are uncertain as to the Man, it shall be brought home to any Man in a blue Coat, if he shall come and say that he did the Fact; so that the Confession is entirely the Evidence, for the other Evidence could not convict him without it.

L. C. J. Do you apprehend that *Grace's* Evidence is not to be considered by the Jury? Is it only, that some Man or other did display the Colours? Does not his Evidence go further? He says he went to see the Man in *Wigmore*, and he believes, that Man that he saw there was the same: Now how far will weigh with the Jury, if of another Confession: And as to the Case of *Beards*, the Fact was found there, but the Jury not finding that he was aiding and assisting, the Court could not supply it for them.

L. C. Baron. You have laid a Stress upon that which is found in the special Verdict. See what the Judgment of the Judges was. But as to *Grace's* in the first special Verdict, and *Beards* in the third special Verdict, we all agreed, that the Verdict was not full enough, as to them, for us to judge of Treason in them, because the Verdict only finds that they were present, and finds no particular Act of Force committed by them, and does not find that they were aiding and assisting to the rest: And it is possible one may be present among such a Rabble, only out of Curiosity to see, and without any view of aiding and assisting in Matters of Fact, which ought to be expressly found by the Jury, and not be left to us, upon any colourable Implication; and accordingly these two were discharged.

L. C. J. Gentlemen of the Jury, *Francis Webb*, the Prisoner at the Bar, stands indicted before you, for that he, upon the first Day of March last, with a great Number of others, did levy publick War against her Majesty. The Proof that has been offered by *Mr. Attorney*, and the Counsel for the Queen, has tended to show, that there was a general Design of pulling down all the Meeting-Houses; and that this Prisoner did assist in it, did carry Colours in it, and did other Acts that gave Assistance in it: This is what they proposed to make out against him.

The Evidence was, first *Taylor*, who says, that the Day before he was going through the Temple, and there was a great Mob that attended Dr. *Southwell* from his Trial, and among them he heard a Discourse of pulling down Mr. *Borel's* Meeting-House; he heard no other mention of it, some were for pulling it down there; others were for leaving it till the next Night, and others till the Event of Dr. *Southwell's* Trial. What Determination they came to, he don't know, for he went away; so that his Evidence goes no further than proving a Design to pull down one Meeting-House.

The next Witness is *Green*; he gives an Account of two Meeting-Houses pulled down, and from made from the Materials, one in *Habers*, the other in *Hotten-Gardens*: That at that Fire in *Habers*, he saw a Man with a Curtain on a Pole, and he called it High Church Standard, and was active among the People, first Couchers, and took Money from those that were in them, and made them cry as he did. As for the Prisoner, he can't say the Prisoner is he. He says he took notice of him, he was in a Livery; and that he went to *Wigmore*, and saw one, who, he can't be positive, but he believes to be the same that he saw carrying the Curtain: But whether it is the Prisoner at the Bar, that he can't say: For he says he has not the same Cloaths, nor Wig on, and that makes him doubtful. Being asked, What Colour his Coat was, he is not sure whether it was blue or green; but he said, he rather believed it was blue.

This not being enough to bring it home to the Prisoner, they call another Witness, who was *Hill*, who showed him the Prisoner. And they brought *Galsworthy*, who went with him, and they tell you, that the Man they showed to him in *Wigmore*, was the Prisoner at the Bar; and their being led together, it amounts to the same Thing as if he had sworn against the Prisoner, as he did against the Man in *Wigmore*; that is, that he believed him to be the same Person that carried the Colours.

The next is *Fisher*; he says, that after the Fire at *Habers*, they came to *Leather-Lane*, that they got into the Meeting-House there, and work'd hard to pull it down, but he don't say the Prisoner was in the Meeting-House: But the Fire they made was in *Hotten-Gardens*, and there he saw the Prisoner carrying a Piece of Wood, and throwing it into the Fire, and making as *Naazra*. He don't say where he had that Wood; he don't say that he saw him bring it out of the Meeting-House, and he don't know him at that Time, but he says his Eye upon him; and not long after, because by Mr. *Leach's* Door, and the Prisoner spoke to *Leach*: What he said, he can't tell, but he said *Leach* he knew him: *Leach* told him he did, and when he was come to *Leach*, he does take upon him to say, that he remembers his Face, and he takes him to be the same Person. He was asked as to his Features, but he don't go about to distinguish them; and it is difficult for a Man to describe their Particulars, by which a Man distinguishes one from another.

Then *Leach* is called, and he confesses, that the Prisoner was at the Fire at the same time that *Fisher* was at his Door; that it was Eleven at Night, and that the Prisoner spoke to him; that his Boy said *Leach*, What, *Leach*, are you one of them? And thereupon he said, They have made me a Captain of a Party; I took a Window-Curtain, and made it Colours; and we burnt the Clock. This they would apply to clear that which *Green* says he burnt the Clock. This they would apply to clear that he believes him to be the same Person as he saw in *Wigmore*.

The next Witness is *Orral*, and he can't charge any thing upon the Prisoner, but gives an Account of the pulling down the several Meeting-Houses, and the several Mobs that were in *Lincoln's-Inn-Fields*, *Drury-Lane*, *Habers*, and *Black-Priory*, and their making general Declarations, that they would have them all down. And thus far his Evidence

is material, that there was a Design to pull them all down. It was solemnly declared, and put in Execution, as far as they did T. One A. and declare the Intentions; for when it breaks out into Action, then the Design appears. He did something further, which is, that he saw a Footman in a blue Livery, that was busy at the Fire, and encouraging the People to throw the Wood in. He says he was a well-made Man, much of the Size of the Prisoner. This is the Evidence produced against the Prisoner; and upon that you will take notice it is made out, that there was a general Design put in Execution, of pulling down the Meeting-Houses, and that he was at one Fire in *Hotten-Gardens*, and there is only the Belief of the Witness to strengthen it as to his being at the other.

On the other Hand, the Prisoner in his Defence tells you, that he is Servant to a Gentlewoman in *Green-Street*; that the Family being going to Bed about Ten o'Clock, and seeing a Light in the Street, ordered him to see what was the Matter: This was after the Clock had struck Ten. He went into *Habers*, and saw the Fire; he saw his friends, did not come near it, and then he came back to his Mistress's House; yet to themselves, that they have given an Account of the whole Time he was out. The first Witness they produced was *Mrs. Boyls*, who was the Daughter of his Mistress; she tells you the Occasion of sending him out, that she observed a Light, and directed him to go, and tells you the Time, that he came back before the Clock had struck Twelve, and that she did expect her Anger for his staying so long. *Mrs. Adis* confirms the same, and being asked what Account he gave when he came back, both they and the Maids say, he gave no Account of the Fire; but she hearing that *Leach* had something to say against him, and taking notice that he was dressed, said him, If he had done any thing. And he said, Nothing to harm him. He says upon his going out, but not of his returning. *Taylor* says, she let him in, but did not believe him say any thing at all about the Fire; but the says he was a blue Livery. Then they call *Piper*, and he tells you, he was coming from *Wigmore* to *Clowkenby*, he saw the Fire in *Habers*, and at the End of *Leather-Lane* he saw the Prisoner looking on, but doing nothing, none of the Mob with him, that the Prisoner and he walked along *Leather-Lane*, and it was whispered, that they should stick together, but they walking together, observed a Fire making in *Hotten-Gardens*; that they walk'd by the Street where his Mistress lived, as far as *Brook-Market*, and there they parted, and the Prisoner turn'd towards his Mistress's House, and, as he thought, went home. Then they produce *Fisher*, and he speaks as to *Grace's* Evidence. And to take off from that Count that *Green* has said, *Taylor* would have said, he says that *Green*, Friday Night, he told him the Prisoner was not the Man, for the Prisoner he saw had a green Livery, and Black Buttons; so he said at last: but upon Enquiry a little more particularly, he did not tell him at that Time that it was a green Livery, but first Time before: And *Green* being call'd again, does own the same; and that he said he could not be positive, and that is what he now says, and only says, he believes him to be the same, and that he told the Witness so at that Time. *Adis* says, that about half an Hour after Ten he heard of the Mob, and went to see it; that he went to the Fire in *Habers*, and there he saw a Footman in Green, but he had red Buttons, and the Prisoner's Livery was Blue with a band with Black, and Black Buttons: But he says he saw a Footman there as Green, which is offered, is let you see that there might be another Person that *Green* did really see. Then *Clark* is brought to give some Account of *Green*, he says he kept a Shop, and broker, and never had a very good Character. *Ward* says the same; and that he was a Gamester; and that it was reported he used to get his Living that way: And he tells you, the Prisoner is of a good Reputation; and those of the Family say as much of him.

This is the Substance of the Evidence on both Sides. The Use that the Counsel for the Prisoner would make of their Evidence, is first, to show that they have given an Account of his Time; that he was otherwise employed than in the Matter the Witnesses for the Queen have given an Account of. Now it is certain, they have not; for they give an Account only of a Walk from *Habers* to *Brook-Market*, whereas his own Witness says he was out at least an Hour and an half, so that there was Time enough for him to be present: And though that Witness has been going home, and not to the Fire, yet it is certain, he did not go home then, and that he was at the Fire, because two Witnesses swear he was at the Fire; and it does appear that he was at both the Fires. Before I say that, give me leave to say, that there is a full Proof of a general Design put in Execution, of pulling down the Meeting-Houses, in any sort that is siding in that, is guilty of High-Treason, though he was not party to the first Design, for in High-Treason there is no such thing as Accessory; all that are Actors are equally guilty, and that was the Case of the Lord *Essex*: He went with some Forces to remove some evil Counsellors, and came to this City to desire Assistance; then Forces he had assembled in his own House; others joined him in the City; it was adjudged they were all guilty of High-Treason, though they did not know of his Design, and that that were accidentally there, and did deny it, it was so, were entitled to his Majesty's Grace, but it is not that they were Not Guilty. So was the Case of the Bloody-Hankers; yet it is not said, that any of them were the Persons that formed the Design of pulling them down.

You are therefore to consider, that it is not enough to charge the Prisoner, that he was at the two Fires: It is not enough that there was Time for him to do what he is charged with, but you are to consider what is proved on him that he did. You observe what is objected as to *Green*, that there is a great Uncertainty as to his Evidence, and that his Credit is not fair: He don't charge the Prisoner positively, nor ever did. He is offered as to the Colour of his Cloaths. And there it is rightly observed, that Blue and Green are not easily distinguished by the Light of the Fire, yet that is not the Objection; the Objection is, that the Witness at first declared, he believed it to be Green, and now he has told you, that he believes it to be Blue, and that is not consistent, and does therefore a little concern his Credit in this Matter, that he has changed his Evidence. Thus they say, that he did not see him at the Meeting-House:

He saw somebody carrying Colours, and believed this to be the Man; but he says, he was not near enough to distinguish his Cloaths, so he might not be able to distinguish his Face. But then they bring some Witnells to show he is not a Man of so clear a Credit, but they don't charge any great Matter upon him. As for his having broke, that may be a Mistake; that may attend any Man: But then they would support this by the Confession he made to *Lord*, who swears, that he said he made Colours of a Curtain. Now that may seem to give some Colour to it; but I ought to take notice of the other Part of his Confession, that he had made him Captain of a Party, which don't appear to be likely; for as he was moving from one Party to another, it would be very unusual for the Captain to have his Mob with him, but it is plain he was unattended in going from one Fire to another. When he was at that Fire in *Hatton-Garden*, he went away alone, as *Laur* says: And they don't say that he did encourage the Mob. He did throw down a Piece of Wood, and huzzas, but he did not much encourage others. As to the Piece of Wood, one of the Witnells did not see it, and the other that did see it, did not see him in the Meeting-House, so that it is not proved he was at either of the Meeting-Houses, though he was at the *Wines*. And you may consider another Circumstance, and that is, that this Witnell, *Fisher*, did not know him before, nor did he know what Cloaths he had on; and if he had not come nearer to him, to *Laur's* Door, in Probability, he had not known him again; but he says he saw him throw a Piece of Wood into the Fire; and he says he kept his Eye upon that Man, and saw him come up, and speak to *Laur*. Now you will consider, whether such a Man might not, in a Crowd, slip out of his Eye, and he might take another for him; for *Laur*, that knew him, says, he did not see him leave any Timber at all.

These are the Objections that I apprehend, may be most proper for me to make to you. As for the *Laws*, if you take it that he is the Man that had the Colours in *Hatton*, and afterwards came to the other Fire, and threw the Piece of Timber in there, he is undoubtedly Guilty of High-Treason: Therefore you must consider, first, how far you believe he is the same that carried the Colours in *Hatton*, and how far you take him to be concerned in pulling down the Meeting-House in *Lancaster-Lane*. I should take notice of another Thing, that there was a Footman in Green, at the Fire in *Hatton*, who was very shire, and that Man could not mistake the Colour of Blue and Green, because he knew the Prisoner: Now that being so, it does appear there was a Footman in Blue, and another in Green, that was active at the Fire in *Hatton*, and one of these two, perhaps, had the Colours; the Question is Which? *Greaves* says, the Man that had the Colours was in Green, and then he says he was in Blue. Now if the first be right, that he was in Green, it does appear there was such an one in Green: If you believe he was the Person that did make use of these Colours, and that he was assisting in pulling down the Meeting-House in *Hatton-Garden*, then you are to find him Guilty: If you think he was not the Person, you will acquit him.

Then the Jury withdrew, and the Court adjourn'd till Five o'Clock, when the Jury brought in their Verdict.

Clk. of Arr. Francis Mills, hold up thy Hand. Look upon the Prisoner. How far is he? Is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

Clk. of Arr. Did he fly for it?

Foreman. Not that we know of.

LVIII. The Trial of GEORGE PURCHASE, for High-Treason, in levying War against Her Majesty, in the Kingdom, under pretence of pulling down Meeting-Houses. 9 Annæ, 1710.

[At the Sessions-House in the Old-Bailey.]

Domina Regina versus Purchase.

Die Sabbaui Pinesius Primi die Aprilis Anno Domini 1710 Regina proditit.

THE Court being released, as in the Trial of *Francis Mills*, and the same Judges being present.

Clk. of Arr. Milesius Cryes, make Proclamation.
Cryes. O Yes; You good Men of the County of *Middlesex*, summon'd to appear this Day, to try between our Sovereign Lady the Queen, and the Prisoner that shall be at the Bar, answer to your Names as you shall be call'd, every Man at the first Call, upon Pain and Peril shall therein.

Then the Jury that were return'd at the Panel were all call'd over, and the Appearance of all those that answer'd to the Call were recorded.

Clk. of Arr. Set George Purchase at the Bar. (Which was done.)
Clk. of Arr. George Purchase, hold up thy Hand. (Which he did.)
Clk. of Arr. You the Prisoner at the Bar, these good Men, whom you shall hear call'd, and do now personally appear, are to pass between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Clk. of Arr. Thomas Sutton, Esq. (Who appear'd.)
Clk. of Arr. Hold Mr. Sutton the Book.
You shall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Clk. of Arr. John Farwell. (He appear'd, and was sworn.)
In like manner the other Ten Gentlemen appear'd, and were sworn, whose Names follow:

JURY.

Thomas Sutton, Esq.	William Harcourt,	Richard Rumbold,
John Farwell,	John Mordaunt,	Richard Hennard,
John Parsons,	Edward Baskett,	Francis Higgins,
Joseph Parsons,	Robert Beckett,	Hamphrey Newman.

Clk. of Arr. Cryes, count these.
Thomas Sutton.
Cryes. One, and so of the rest.
Clk. of Arr. Hamphrey Newman.
Cryes. Twelve, good Men and true, stand together, and bear your Evidence.

Are you all Sworn, Gentlemen?
Cryes. O Yes. I say one can inform my Lords the Queen's Justice, the Queen's Sergeant, the Queen's Attorney-General, or thus inquest now to be taken, of the High-Treason of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance. And all Jurymen of *Middlesex* that have appear'd, and are not sworn, may depart the Court.

Clk. of Arr. George Purchase, hold up thy Hand. (Which he did.)
Gentlemen of the Jury, look upon the Prisoner, and hearken to his

Cause. He stands indicted by the Name of George Purchase, late of the Parish of St. Andrew, *Hatton*, in the County of *Middlesex*, Labourer, for that he not having the Fear of God before his Eyes, but being moved by the Impulse of the Devil, did, (as in the Indictment, recitatur manifestum,) against the Peace of our Sovereign Lady the Queen, her Grace and Dignity, and against the Form of the Statute in that Case made and provided. Upon this Indictment he has been arraign'd, and therewith hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of the High-Treason whereof he stands indicted, in Manner and Form as he stands indicted, or Not Guilty. If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the time of the High-Treason committed, or at any time thence. If you find him Not Guilty, you are to enquire whether he be for it: If you find that he be for it, you are to enquire of his Goods and Chattels, Lands and Tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he be for it, you are to say so, and no more, and bear your Evidence.

Mr. Thomas. May it please your Lordship, and you Gentlemen of the Jury, George Purchase, the Prisoner at the Bar, stands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Impulse of the Devil, and desirous to withdraw the cordial Love and natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen do and ought to bear towards Her, and intending to disturb the Peace and common Tranquillity of this Kingdom, on the First of March last, in the Parish of St. George, *Dew*, in the County of *Middlesex*, traitorously compass'd and imagin'd to levy War, and stir up Rebellion and Insurrection against our said Lady the Queen within this Kingdom: And that he might accomplish his said traitorous Imaginations and Designs, on the said First of March, and in the said Parish being assembled, with a Multitude and great Number of People, armed and arrayed in a warlike Manner, he did then and there unlawfully and traitorously levy War against our said Lady the Queen, contrary to the Duty of his Allegiance, against the Peace of our said Lady the Queen her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.
Gentlemen, we shall call the Evidence for the Queen, and if they prove the Charge, as laid in the Indictment, we doubt not but you will find him Guilty.

Mr. At. Gen. My Lord, the Prisoner at the Bar stands charged with an Indictment of High-Treason. The Species of High-Treason has been open'd by the Gentlemen that open'd the Record: We shall prove it by calling Witnells to show, that he was one of those wicked Persons that did assemble themselves in *Dew-Lane*: We shall show, that this rebellious Assembly was got together to do Right, as they call'd it, to a Gentleman who was under a Protection of the House of Commons; his Name is known, I mean Dr. *Saunders*: they resolved, that to do him Justice, they would be revenged on the Meeting-Houses of the Dissenters, and therefore they resolved to pull them all down: That this Design was framed in that Assembly that did attend Dr. *Saunders* and to from his Trial, it was then resolved to pull down the Meeting-Houses in several Places in this County, and the City: That the Prisoner was among those that assembled in *Dew-Lane*; that he was with his Sword drawn; that when the Guards were come (for they were too many to be withstood by the Civil Government) the Constables and Watch were too few to withstand that Assembly, therefore it was necessary, for the Preservation of all honest Men's Lives and Estates, for to send the Guards to suppress this Tumult, and it was great Grace in Her Majesty to have that Regard to her

People

People. When they came, they told them with more Tenderness than they need have done; they spoke to this Man to put up his Sword, and he gone! No, he came with a Resolution, and till that was done, he would not put it up. They came the second Time, and asked him, Do you know that you are defying Authority, in opposing the Queen's Guards? You are opposing the Queen's Person, therefore pray be gone: No, he persisted in it, and had the Courage, or Impudence, to affront the Officer that was at the Head of the Guards, and would have killed him, if one of the Guards had not, by a lucky Stroke, beat his Sword down. He was so devoted to the Cause, that he declared he would lose his Life in the Cause; and what was this Cause? It was opposing a just and necessary Prosecution, that was carrying on by the Commons of England, before the greatest Court in England, and, perhaps, in Europe; and they thought fit to find him guilty of the Charge that was laid against him. Thus gave these People Occasion to exercise their Revenge on all the Meeting-Houses. We have had the Determination of the Courts oftentimes, that this is a loving War within the Statute of 25 Edw. III. When we have made this appear, we don't doubt but the Jury will find him guilty.

Mr. S^r. G^o. My Lord, we will call our Witnesses, and prove the Facts.

Then Thomas Telbey rose *four*.

Mr. At. G^o. Pray give an Account if you saw any Tumult, or Number of People, that attended Dr. Sacheverell; and what Discourse you heard among them; and what Resolution they came to.

Telbey. As I was passing through the Temple, on Tuesday Night, I saw a great Number of People that attended him; I there heard them tell upon demolishing Mr. Burgoyne's Meeting; some were for doing it then, others for leaving it till the next Night.

Mr. At. G^o. What Night was this?—Telbey. It was the Tuesday Night.

Mr. At. G^o. Was it before the first of March?—Telbey. Yes, it was.

Mr. At. G^o. Was it resolved by more than one?

Telbey. By a great many.

Mr. At. G^o. Then you take it to be general?—Telbey. Yes.

Parish. Did you see me there?—Telbey. No.

L. C. J. Did you fly there any Time?

Telbey. No, I only heard them discourse of it as I passed along.

Mr. Baron Bury. Did you say till they came to a Resolution? Or were they only talking of it?

Telbey. They came to that Resolution then.

Mr. Baron Bury. Did you say till they were agreed upon it?

Telbey. It was agreed to pull down the Meeting-Houses, though the Time was not fixed.

Mr. Baron Bury. Did you know any of them that this was agreed by?

Telbey. No, none of them.

Mr. Baron Bury. What did you hear them say?

Telbey. I heard them resolve on demolishing Mr. Burgoyne's Meeting.

Say they, Come Boys, we will demolish Dr. Burgoyne's Meeting; others said, No, we will defer it to the End of the Trial.

Then William Orrell rose *four*.

Orrell. My Lord, before I give my Evidence, I beg Leave to speak a few Words. Parbury's Wife has been in my Neighbourhood, and offered Money to several People to come and swear against me, to take away my Reputation: And Yesterday a Person came into Mr. Leonard's Coffee-house, and said publicly, That I was perjured; that when I swore against *Will* I was perjured; that the Jury would not believe me; and that I was reprimanded by the Court and the Queen's Council. My Lord, I desire I may clear myself.

Mr. At. G^o. There is an Information laid before me, which I shall take Notice of in a proper Place; for it is an insolent Thing, in any Government, that when we are proceeding in a judicial Way; if the when People have the Benefit of the Law that was made for them, a Copy of the Indictment and of the Panel, Liberty to examine Witnesses, and ask what Questions they think proper; and they cannot say, but that there has been a Tenderness in us, that are the Prosecutors, not to push Things further than the natural Impulse of them; yet that such Practices should be used to disfigure the Queen's Evidence. I have an Account, that John Roberts, a Mathematical Instrument-maker, has, at Leonard's Coffee-house, affirmed, that the Queen's Witness was a perjured, infamous Villain, in giving his Evidence here. I shall, in a proper Time, endeavour to bring him to Justice for it.

L. C. J. It was not improper for him to mention it here. I was far from repeating him, or thinking his Evidence false; that I never heard of a Trial opposed one Word he said.

Mr. At. G^o. Mr. Orrell, pray consider you are now upon your Oath; therefore, without Regard to Threats, you must speak the Truth, and all the Truth, and God forbid you should be afraid of it.

Mr. At. G^o. Was you abroad on Wednesday the first of March? What did you observe of the pulling down any Meeting-Houses? Give an Account of all the Places you were at, and what Concern the Prisoner had in it.

Orrell. About ten o'Clock, or a little before, I went to Leonard's Coffee-house, and hearing that they were pulling down several Meeting-Houses, I went with another Gentleman, Mr. Abingdon, directed to *Henry*. When I came there, I saw Abundance of People, a great Mob, carrying the Materials from Mr. Bradbury's Meeting-house into *Henry*. I asked the People where they carried them? They all said to *Henry*. When I had stood there a little Time, I says I to my Friend, Let us go into the Meeting-house; I will see; it may be, I may know formerly there. I went through a dark Passage, and narrow Entry: When I came in, Lord have Mercy upon me, said I, it is all down: I turned back to my Friend, Mr. Bradbury. This is destroyed, said I, let us go for where they burn it. We went to *Henry*, and all the Way we saw Abundance carrying Wood quite from the Meeting-house to the Fire in *Henry*. We made no Stay at the Fire, but immediately went through *Turf*, and down by Lin-

coln's-lane Gate-Wall, so the Fire there, which was made of Mr. Bradbury's Meeting-house, which I had been in two Hours before, I saw them pulling it down. When we had been there a little while, I said to my Friend, Let us go towards the other Part of the Town, and see what is doing there. We went along that Side of Leonard's-lane-House, where Mr. Child's House is: When we came to the Corner, by my Lord Chancellor's, at my Lord's Door, there stood a Chance; said I, I believe there is somebody from Court, I hope there will be a Power, by-and-by we shall have the Guards. We made no Halt there, but went softly towards the Arch: Before we came to it, I saw a pretty tall Man leading a Body of the Mob through the Fields; about the Middle they made a Halt, and became a bigger Number; we walked softly to meet them: I kept my Eye on the tall Man, which proved to be *Dennison*: Some of them were for going up *Queen-street*, and some were for going through the Arch. When they came near the Corner, he struck three off, and went over the Rail; just after the Wall, about the middle Way between *Pratt* House and the Arch, and there they called a Council: Says I, There's a Council of Mob; there I saw *Dennison*. Said they, Where shall we go now? To *Derry-Lane*, or *Wild-street*? No, said some, to *Derry-Lane*, huzzas! *Wild-street* is a Hen-Roost, the other is worth ten of it. *Dennison* huzzas! huzzas! Come along, Boys, we will have them all down, and they carried it by the Majority. I went under the Piazza at *Pratt* House, into *Queen-street*: When he was in *Queen-street*, he made ten or twelve Halls, and turned about, huzzas! High-Church and Sacheverell! God damn all his Enemies, we will have all the Meetings down to-night, follow me, Why don't you come along? And this he many times repeated, and then he headed them till he came to *Derry-Lane*; there some of the Boys ran to find the Meeting-house Door, but they missed the Door, and went to some of the Neighbours Houses; but they soon found out the Door, and there came a little Fellow, with a Pick-Ax, to break down the Door. A Woman that belonged to the Place came crying, that her Sister was in the House, and would be killed: Do not be afraid, Mother, said I, I will endeavour to pacify them, if I can: But at last came another Man with a Hatchet, and struck through the Door the second or third Time. God damn you, says he, don't you know how to break down a Meeting-house Door? That Fellow cannot be found. I went in with them, and there I was assaulted by a Soldier; and when I was there, they would have me go up Stairs with them. Pray, says I, don't go up, there is only a poor Woman's Room, that holds up the Place. What will it signify, if you should burn an old Devil's? God damn you, says he, are you against Sacheverell? Says I, I have the Queen's Commission: Upon that he cried out, The Church, the Church, God damn you, you shall go up. That Man, I suppose, was a Soldier; he was in a loose Waistcoat and white Stockings. I went up with them, and it proved to be Mr. Earl's own Lodging; and there they took up a great many Papers, Manuscripts, which I suppose might be Noises. As soon as I came out, I saw the Clock and the Cullion thrown down into the Kennel in *Derry-Lane*; and they were the two first Things that were brought out, as I observed. I asked, indeed, Why they came to complain, and give me ill Language? Says I, Where is *Toby*, the Watchman? Oh damn you, says one, he is gone with a Party to St. James's: Another said, he was gone to my Lord *North's*; and others said, he was gone to the Back-Door to break it open, but I saw him no more after that. When I came out, I went to the Man that keeps the Griffe and *Parrot*, and told him, I was sorry to see these Things; and my Friend went to his Brother's House, which was hard by. After my Friend was come again, Well, said I, I will go into the City, to Leonard's Coffee-house, and give an Account to our Friends of what has happened, for they will stay for us, and will not go to Bed, if I don't go back to Night. We agreed to go home; but my Friend asked, Where was the Meeting-house in *Wild-street*? Says I, I know *Wild-street*; but I believe it was the old *Will* House: So we went through *Wild-street*, and as we came to the Arch, we saw the Detachment of the Guard coming on a full Trot. Says I, Gentlemen, I pray make haste, they are pulling down the Meeting in *Derry-Lane*. I put out my Hand to the Captain, This is the best Way, said I, through *Wild-street*: And another Detachment went another Way. As soon as they came (I was near the Officer), he commanded them to file off, and disperse the Mob; and they rode among them to disperse them. While I was there, I saw a Man with his Sword drawn, near the Griffe and *Parrot*, who was the Prisoner at the Bar: I went over the Way, and spoke to him.

Parbury. What Time of Night was this?

Orrell. It was about half an Hour after Eleven. Several of the House rode up to him, and then he retired under the Balke, and pulled with his Sword at several of them; and some of them thrust at him with the Pikes of these Swords. Says I to my Friend, I wonder they don't cut him to Pieces. I went to him; Pray, says I, what are you doing? Pray go home. He earned his Back, and I thought he had been gone. In a Minute's Time, the Guards had rode round the Fire, and dispersed the Mob a little: In a Minute or two, I saw the Prisoner with his Sword drawn, hallooing and flourishing his Sword in the Middle of the Street, just by the Kennel in *Derry-Lane*, and frowning the Guards. I came to him, and laid my Hands upon him, and pulled him back, What are you doing? Two Foot-Soldiers came to me, and said, What do you do? He is drunk; he is an honest Gentleman, says I, Take him away then, if he is your Friend. Says I to him, Do you know what you do, in opposing the Guards? You oppose the Queen's Person. Says he, God damn you, are you against Sacheverell? I am for High-Church, I will be for High-Church and Sacheverell; I will lose my Life in the Cause; and this many Times repeated. I went over the Way, and he advanced with his Sword, and ran at the Officer, just at the left Flank: At that, I saw a Gentleman's Horse spring forward, and he struck his Sword down. I went back, thinking there would then be firing, and I might be killed.

L. C. J. Pray repeat the Words again, which he spoke to you, when you told him, that telling the Guards was opposing the Queen.

Orrell.

Seabright. I can't be positive of that.

Mr. Anger. Did you observe him poke at any Horses?

Seabright. No; I saw no such Thing.

Free George Richardson was *seized*,

Mr. Anger. What Troop of Guards are you of?

Richardson. The third Troop.

Mr. Anger. Look on the Prisoner, and tell us whether you remember him.

Richardson. I know him well, for we were always together in *Flanders*.

He was in the First Troop of Guards when I was in the Third.

Mr. Anger. Now did you see him among the Mob the Evening of *March*

at Night?

Richardson. I was upon the Guard that Night, and something after

Ten or Eleven o'clock, as it is, that the Mob was up. We were ordered to

maintain it to mount, and at first the Foot pulled us to *St. Peter's*.

Ball. Wherever came most *Londoners* to the *Ball*, we left the Foot, and

made to *Drury-Lane*, when we were there, the Officer commanded us to

fall off, and disperse the Mob, which we did. I was riding among the

mob, they fled off, not hurt together, but singly, and when I came

back to a *hundred* the Fire, I saw the *Mr. Parsons*, and my Officer,

Captain *Hay*, was talking to him; what he said, I don't know, but

he pulled him, *Parsons* made a Thrust at him, but I beat down his

Point.

Mr. Anger. Who did he thrust at?

Richardson. My Officer, Captain *Honourable*.

Mr. Anger. Where he is? *Richardson.* To the Country.

Mr. Anger. Then you say you beat down his Point.

Richardson. I went to cut at him; *Yes*, You said, have you a mind

to kill my Officer? I went to cut at him, but I had some hand against a

Bulk, and I hit the *Parsons* with my Point, and my blade broke to

pieces.

Mr. Darnall. You say you saw him talking with the Captain; had he

any word drawn at that Time? *Richardson.* *Yes*.

Mr. Darnall. Were there any Mob about him then?

Richardson. They were very close about us at every Side; we were dis-

persed thus as well as we could.

Mr. J. J. Did the Prisoner know Captain *Honourable*?

Richardson. I believe he did; for he was almost with us at the first

Time when Captain *Honourable* was there.

Mr. Anger. At the Mob, we have done with our Evidence.

Mr. Darnall. I am of Counsel with the Prisoner, and my Lord, I

shall make to *Defence*, but as the Gentlemen on the other Side say, there

was a great tumultuous Assembly, that was gathered together with an

intention to pull down the Meeting-Houses; And I shall make an Oath

but it was High-Treason in all that was guilty of that Intention, or as-

sisted thereof that were so. But on the other Side, we must beg Leave to

say, that any Person that was going along the Street, and fell into the

Company of those that had that Design, though they might use some Expres-

sions that were Evidences of the Intention; yet if they were out of the

Intention, nor did any thing that was assisting in the Execution of it, they

will not be guilty of High-Treason.

They have offered Evidence to show there was such an Intention. The

first Witness is only to show, there was a general Intention. And I must

take Notice, that when he says there was such a general Intention as

is necessary to make this High-Treason; For he says, as he went

through the Temple, he heard some People say, they would go and pull

down the *St. Peter's* Meeting-House; others testified it: Some were for going

that Night, and others for deferring it till the Trial was over. Now in

they came to no other Resolutions, than that some were for going that Night,

and others after the Trial was over; then the Action which happened the

next Night, and before the Trial was over, could not be an Execution of

that Intention; nor can they say that any one of those that were at the

Temple was at this Execution. And therefore, if there be no other Evi-

dence to show a general Intention, then this Affair was done without any

previous Intent, and only he is a sudden Execution of a Design.

The first Witness in the *Fall* is *Orrell*. And I must beg Leave to take

Notice of the Introduction to his Evidence, which he would make use of

as a Rebellion on the Prisoner; but I believe the Gentlemen of the Jury

will not think that he had any Hand in it. There may be wicked People

enough to say such Things; and no doubt *Mr. Darnall* will take care that

they shall be justified according to their Defences. And I would take this

Opportunity to say, that I don't for but he is free from any such Charge.

I let no Inconsistency between his Evidence, and that which was given for

the Prisoner. But as to that Suggestion, that the Prisoner's Wife has

been about in his Neighbourhood, I don't for any thing of that proved.

As to the *Fall*, he says, he came up *Down-Lane* half an Hour past Ele-

ven; that there he saw the Prisoner from the other Side the Way, with

his Sword drawn; that he was hallooing and waving his Sword; that the

Guards coming on, he retired toward the Bulk; and that he pushed at

the Guards. The next Place he saw him at was a little from the place

among the Horse-Guards; there he was waving his Sword, and crying,

Down all *Sweden's* Enemies; I will fight them all; I will sell my

Life in the Cause; Come on, Boys; and to that Purpose. And that he

did push at the Captain of the Guards. I think these Expressions carry a

Face of Madness, or great Drunkenness; nobody in his right Senses would

think himself fit to fight all his Enemies, and call to them to fall on,

when at the same time he fled himself, and there were none to fall on.

Mr. J. J. He did not say there were none: He said they were not dis-

persed.

Mr. Darnall. I asked whether any body was near the Prisoner when he

used that Expression, he said they were dispersed.

Mr. J. J. Call him again, and let if he said so. What say you, Did

he stand single and alone, and all the rest at a Distance?

Orrell. No; I saw him at the Head of a smaller Body just at the Kennel

in *Lang-Down*. I went and spoke to him, and pushed him back; and

then there was a greater Number.

Mr. Darnall. I ask, When he pushed at the Captain, was there any

body close to him?

Orrell. There were some before him, but they did not keep so close to

him.

Mr. J. J. Where was it that you say he called to them to fall on?

Orrell. At the End of *Lang-Down*.

Mr. J. J. Now were there any other persons up, or following him?

Orrell. A great many were close to him then; but he addressed rather

than they would follow him.

Mr. Darnall. *Yes*, Lord, I say, this Expression did speak a Murder, as

in a Moment of Time, as in Drink, but the Substance at what he said was

only, That it was for *Sweden*, and would turn the Cause. *Orrell*,

one of the Horse-Guards, says, he saw him there again; so said;

and that he got in behind, and was between the Horses; so that he must

be in among the Horses by Accident; if he had been among the

Guards, doubtless he would have been at the Head of them, and not have

gone in between them. So that he could not be then assisting them, but

came there for Shelter, rather than to assist them. The third *Seabright*:

He says, he saw the Prisoner hallooing for *Sweden*, and a little

time lost Sight of him, and he saw afterwards at the End of *Lang-Down*;

and that Nobody was then with him. *Richardson* says, he knew him, and

saw him talk to the Captain of the Guards; and it would have been pro-

per to have produced the Captain, to give an Account what passed between

them, to know whether he was encouraging the Mob, or defending the

Guards. The Defence that passed between them, we think, would have

been material: But we think it is an Evidence, in that it was a witness

is repeated; for if it had been such a Discovery, the Captain would

have ordered him to be secured: Therefore we think it looks as if the Cap-

tain did not take him to be concerned in the Murder. They do not pre-

tend to show that he was at any of the Meeting-Houses; that he was in-

fluenced in pulling them down; that he had any Part of the Intention;

that he had any Hangers or Bladders: But the first Account they give of

him was about Half an Hour after Eleven; and then said, if not, all

the Mischief was over. So that all they can say is, That he came in at the

Letter End of the Cafe.

As to our Case, we will show that the Prisoner is in his Employment as

a Bell-boy, at the Time that is mentioned, we have a good Account to give

of him all the Day long: In the Morning about Nine, he had Drifted to

across one, and sent for one *Ann* *French*, so leitch *Marshall's* Court went

to visit the Man in *Hunter-Garden*: About Eleven the Plaintiff and De-

fendant met together at the Crown in *Chancery-Lane*, to call that Matter:

At Twelve he went from there to the Savoy, after that he went to one

Green's, a great Beer, in *Brandy-Shop*; and thence of his Employment, great

numbers were seen at the Liberty in drinking; and there he found a whole

Company of men at the *High-Street* Tavern; and then returned to the *Bras-*

Shop again. About Nine he went to his own House, when he came

thither, there was other Bell-boys required him to go about, for Mr.

Bread the Bell-boy had sent for him to the *Tavern* in *Great Garden*;

and there he found half Eleven. He was to much in Drink, that as he was

going home to Bed, he was met in the Street, and offered a Chair: But

before he got into the Chair, the Mob were got together, and they being

him so much in Drink, made sport with him; and he did express himself

for *Sweden*, as every body was forced to see. After that he had said him

that, they put him in a Chair, and carried him home. He was in such a

Condition with Drink, that it was apprehended he would be so, if he

was not taken care of; and he was carried to a Physician, who

examined him, and he was found to be in such a Condition, as

before Twelve o'clock: And he continued thus till all the next Day.

This will show that he was not in the original Intention, but he came

accidentally at Eleven, or half an Hour after; and then the whole *High-*

Street was over. And however he might behave himself through a

Excess of Drink, yet they must offer some Evidence that he was in the

Intention or Execution of that Design; for the Affair made on the Guards

is barely an Assault, and can't be High-Treason. If he did no more when

he met the Guards, but drew his Sword to defend himself against the Mob,

that were coming to near him, if he did retire, and only push at the Mob,

that will be no Manner of Offence, if he did misbehave himself, by Rea-

son of the Excess of Drink, and offer to push at a Mob, if he had killed

him, it had been Murder; but it could not have been High-Treason.

When we have proved our Case, we will leave it to your Lordship and the

Jury, and hope there will be no Evidence to contrail us.

Mr. J. J. I would ask where that Captain is?

Richardson. He is in the Country. He married a young Lady lately,

and is gone into the Country.

Mr. J. J. When did you see him?

Richardson. Not the Fortnight.

Mr. Anger. Not the Fortnight, the Officer which the Prisoner stands charged

with a great Offence, to help them High-Treason, in *Excess* *Ward* *Ward*

her Majesty; the Prisoner, if guilty, will be the most I ever met; I

there we hope the Gentlemen of the Jury will expect, plain, just, and

swift Proof, and will not be misled by private Opinion, Prejudice, or

Probability. My Lord, I beg Leave to conclude now for the Evidence

given will assist the Prisoner, as to the Crime he is charged with. The

Treason they have given Evidence of is an Intention to pull down *Meeting-*

Houses in general. It is not pretended that the Prisoner was concerned

in that, or was at any of the Meeting-Houses, but only they would prove

him guilty, by adding and assisting those Persons that were concerned

in that. Now it will not be pretended, that all that were present when

those Mob were, are guilty of this Crime: Many were there out of Cur-

iosity, many by Accident, many passing along on their Occasions, which

we say was the Case of the Prisoner. It cannot be imagined that such

Persons that appeared there single were engaged in the Design. We say,

There was no Resistance made by him to the Guards; that he defended nobody,

but what passed don't appear. If this Fall had happened at any other Place where he had planned to meet the Guards, and he had assisted them; that Fall in itself, confided, would not have amounted to High-Treason. As to the Place, that it was near where the Mob was gathered too, that will be accounted for, because it was in his Way home, and near the Place where he lived. They take Notice of several Expressions he made use of at that Time of offering to fight the Guards, and denouncing *Scotchmen's* enemies, and the like; we think there are such Expressions as might be expected from a drunken Man, a Man on the Commission he was in, and it don't appear to be an Aid and Abettment of that Fall, which tumultuous Persons were about. It don't appear that he was only to go, and the Matter was over before he came. We shall give an Account of his coming to the Place where the Guards were; that he was not among the People, but coming in his Way home. And if it appears not to be done in Aid of that traitorous Deed, and of those Persons that were concerned in it, it will not be Treason. For a Man to be singly furnishing his sword when he was in the Power of the Guards, it shows the Action of a Man not in his Sense, and that is a more probable Account of the Matter, than that he did it in Aid of those traitorous Persons. So that if that be only doubtful, and the Fall is not a levying War, if it be only doubtful, and is capable of being construed the one way or the other; yet in the Case of Life the Jury will, in favour of Life, incline rather to acquit than condemn. We will call our Witnesses, and hope to give you Satisfaction that he is not guilty of this Crime.

Tom Amos With our Jurors.

Mr. Darnell. Give an Account to my Lord, and the Jury, Whether you remember Mr. Purchase any where, the Fifth of March last? And when you last him felt?

Witness. He call'd on me, between Eight and Nine in the Morning, to go with him, to receive a Writ: I went with him, and we took the Prisoner.

L. C. J. I will not hinder you from taking your own Method, if you think it will be of any Use to them where he was all Day.

Mr. Darnell. It may be interr'd from that Evidence, that he was not concerned in the Deeds.

L. C. J. Then you would make use of it to show, that he was not in the Ditch all the Day, but to make his coming there accidental? I don't find that the *Queen's Counsel* say he was at any Consultation.

Mr. Darnell. Pray give an Account, when he fell came to you, and when you parted.

Witness. I came to me in *St. John's-Lane*, to go with him to execute a Writ; and it was between Eleven and Twelve when they paid the Money, and then he went away with the Plaintiff.

Mr. At. Gen. Are you acquainted with the Prisoner?

Witness. Yes, very well.

At. At Gen. What Profession is he of?

Witness. He is an Officer in the High Bailiff of *Westminster*.

Mr. At. Gen. Who is he an Officer to?—Witness. To Mr. Higgins.

Thomas Cornelius Johnstone with Jurors.

Mr. Darnell. What Time of Day did you see Purchase upon the Fifth of March last?—Witness. I was with him between Eleven and Twelve, at the *Green in Chancery-Lane*.

Mr. Darnell. How long did you stay?—Witness. From thence we went upon the Strand, and I parted with him at the *Step*.

Mr. Darnell. What Time of Day?

Witness. About half an Hour after Eleven.

Mr. Darnell. Who was he going to at the *Step*?

Witness. I don't know to whom.

Thomas Benjamin Holden with Jurors.

Mr. Darnell. Pray give an Account when Time you was with the Prisoner on the Fifth of March last.

Witness. Mr. Purchase was going towards *Whitehall*, so we went all three together; and Mr. Purchase called on one that owed him some Money, but he was not at home; but, I will find him out; but he did not meet the Man, so we went to drink a Pint of Wine, and we agreed to dine together, at Two o'Clock, in *Chancery-Lane*, which we did; and after Dinner, says I to Purchase, Here is a full Nostril and Root, no Business it is to be done, let us sit, and smoke a Pipe; for we lost 'till Four o'Clock. Says I, Where are you going? I am going home, says he; but instead of that, he went to *Goat's Brandy-Shop*, at *Long-Away*; there he went and drank.

L. C. J. Did you go with him?

Witness. No, but he said he would go there.

L. C. J. How do you know what he drank?

Witness. *Goat's* Man told me so.

L. C. J. What time did you meet him again after you had parted with him on the Fifth of March last?—Witness. It was about Two.

L. C. J. And what time did you part with him to go there?

Witness. It was nigh Twelve o'Clock.

Mr. At. Gen. About Four, you say, you asked him to smoke a Pipe; When did you say to him?

Witness. Says I, There is a great Noise about, there is no doing Business.

Mr. At. Gen. What did you mean by that great Noise?—Witness. I meant about Dr. *Lawson's*, there was a great Noise about the Temple.

Mr. At. Gen. Was the Mob up then?—Witness. No.

Mr. At. Gen. But he would not stay with you?

Witness. No, he said he would go home.

Thomas John Lane with Jurors.

Mr. Darnell. Do you live at *Goat's*?—Witness. Yes.

Mr. Darnell. What time of Day did Purchase come to your House?

Witness. A little before Four o'Clock; and he drank with my Master 'till past Five. My Master gave him a Bottle to send a Gentleman, and then they went to the *Haystack's* Tavern, and had three till Eight; then he came back again, and drank with us, and was very drunk.

L. C. J. Where he went to the Tavern, how long did he stay there?

Witness. Two Hours.

L. C. J. How do you know?

Witness. I am sure of it; the *Land* of the House will witness it.

Mr. Darnell. How long did he stay at your House?

Witness. He said there, and about the Door, till half an Hour after Eight.

Mr. Darnell. Where did he go then?

Witness. He went towards, I suppose.

L. C. J. What did he do about the Door?

Witness. He went to the Door, and drank there with some Men.

L. C. J. Who were they?

Witness. One *Allen*, and *George*, two Officers.

Thomas Dupper with Jurors.

Mr. Darnell. Do you remember that the Prisoner came to your House the Fifth of March last, with Mr. *Goat*?—Witness. Yes.

Mr. Darnell. How long did he stay?

Witness. I believe he was there about two Hours.

Mr. Darnell. What time did they come in?

Witness. In my Opinion, it was about Five or Six o'Clock.

Mr. Darnell. How long did they stay?—Witness. They went away a little before Eight, to the left of my Knowledge.

Mr. Darnell. Were they three all that while?

Witness. Yes, they were, upon my Oath.

Mr. Darnell. Did the Prisoner and *Goat* go away together?

Witness. Upon my Oath, they did.

L. C. J. What time did the Mob begin that Night?

Witness. I did not mind.

Thomas Sarah Ross with Jurors.

Mr. Darnell. Did you see the Prisoner at Mr. *Goat's*?

Witness. I was at Mr. *Goat's*, when Mr. *Forbes* and he came back from the Tavern; I saw him in Drink, and I did not go home. I was half an Hour in the Shop, when he was there, he was very much in Drink, and at last he went home along with me. When he came home, he sent for two Pots of Ale, and was at home half an Hour, and then came a Porter from a Tavern in *Goat's* *Green*, to tell him know somebody wanted him there, and he took Coach to go there.

Mr. Darnell. What Time was that?

Witness. It was about half an Hour after Nine.

Mr. Darnell. You say he went in a Coach, Was he in Drink then?

Witness. Yes.

Mr. Darnell. Did any body go with him?—Witness. Yes, Mr. *Lovely*.

Mr. Darnell. Why did he go with him?

Witness. His Wife desired Mr. *Lovely* to go along with him, because he was so much in Drink, and to bring him home again.

Thomas Thomas Lovelady with Jurors.

Mr. Darnell. Give us an Account when you saw the Prisoner that Night.

Witness. I went home with him about Nine o'Clock, and he sent for two Pots of Drink, and I sent we were drinking them. Mr. *Broad* sent for him to a Tavern in *Goat's* *Green*. His Wife, at first, would not have had him go, but I said, it may be Mr. *Broad* had Business with him; so he desired me to call a Coach, and to go with him, and so he left Mr. *Broad* was there; so I went with him to the Tavern, and left him there, and came home.

Thomas Jacob Broad with Jurors.

Mr. Darnell. Did you find for the Prisoner that Night that the Mob was?

Witness. I have known him some Years: I happened to have occasion to have some Goods appraised, which I had taken in Execution: I sent for Mr. *Arnold* and Mr. *Hellway* to appraise them; and when they had appraised them, I desired them to go to some House, and give me an Inventory; then we agreed to go to the *Griff-King* Tavern; this was about half an Hour after Seven. I left them there, making up their Inventory, and went to a Coffee House hard by: There I heard of a Gentleman, that was to be in the Tavern, when I had a Warrant against for two Hundred Pounds: I had Nobody with me; I went to the Tavern, and then it was half an Hour after Eight, says I, I have Nobody with me; I will send for Purchase: He came to me in a Coach, much in Drink; says I, What do you come to me for, I said? You are not fit to go about Business: I will not go with you, says he, unless you will give me a Coach, and a Pint of Wine. I said, it was needless, I had rather give him a Bottle another Time; but I did give him a Pint, and he said 'till between Nine and Ten, Mr. *Arnold* had occasion to go away, and he left the rest of us. He was much in Drink, and I could not get him out of the Room. When he is sober, he is a very civil Fellow, but when he is drunk, he is quite mad. About Ten, I took my Leave of *Hellway*, and went over *Lovely's* Garden with him; he hang upon me, and was very troublesome. I had him say a Coach; says he, it is a madding Night, I will see you home: Says I, You shall not see me home: Says he, I will call a Chair for you, for you are drunk; though I was as sober as I am now. He call'd a Chair, and to humour him, I went into it; Now, says I to him, pay do you go home: Now by that time, I believe it was within a Quarter of Eleven, or thereabout. After I left him, I had not been at home above an Hour, but I had News brought me that he was beaten, and fled very ill, and carried home very bad; and thus is all I know of the Matter.

Mr. At. Gen. Where did you part with him?

Witness. I was in *Bridge-Street*.

Mr. At. Gen. Did you see when he was sent?

Witness. I did not see for which Way he was sent, but it was about Eleven o'Clock, and he told me, he would go directly home.

L. C. J. Was the Mob up in *Goat's-Lane*, when he came to you?

Witness. When we were in the Tavern, the Master of the House came and told us, that Mr. *Burgess's* Meeting-House was pulled down, and burning; and that they had begun to pull down another. This was about Ten o'Clock.

L. C. J. Where was his House?

Witness. In *Drury-Lane*, a little way from *Long-Away*.

L. C. J. Then after you parted with him, he must go through the Mob. Now you, who were as sober as ever you were in your Life, and sensible how bad he was, must have taken so much Care to go to a Coach, which way he was to go home: How comes it to pass, you did not see him home?

3

Broad

Broad. My Lord, I would have sent him home, but I am not a Man that engage myself in Mob, for those of my Employment generally suffer in Mob; I avoid them if I can; and if I must them, I give them all the good Language I can.

L. C. J. But there is another way you might have secured him from the Mob, for I suppose he was well disposed to have staid longer at the Tavern.

Broad. Yes; but I did guess, that at Eleven o'Clock these Mob were generally out; and before we came out of the House, we heard the Guards were abroad, and I guess'd he might go home safely the Way he was to go.

L. C. J. You have given another Reason why you should take care of him, because he was troublesome in Drank, and was a Baitiff, and liable to be affronted; therefore you should have taken care of him.

Broad. I believe it had been another Night, I might; but if I had gone with him, then I might have been in the same Condition with him; I don't know but I might have been forced to say something or other, so have myself from the Mob.

Paraph. My Lord, the Meeting-House is as near my House as it is from hence to your Lordship; at a back Window I can hear them preaching.

Then Mr. Bemburgh was sworn.

Mr. Darnell. Pray give an Account of what you saw and observed of the Prisoner, that Night that the Mob was up.

Mr. Bemburgh. My Lord, I was at an Old-Shop, at Long-Acre End, with several others, about Eleven o'Clock, when the Guards came and dispersed the Mob that were there. When they had been there a Quarter of an Hour, or thereabout, the Prisoner came to the End of Long-Acre, and stood there by himself, and Nobody near him. Our ride up to him, and talk'd to him for some time; they had not talk'd long, before two more rode up, and fell upon him, and drove him a few Doors; he retired, and there they left him.

L. C. J. Who were the others that were with you in the House?

Mr. Bemb. There was one Jeffrey, who lives in Blenheim-Square, and a Watchman in Gray's Inn Passage, and one Mr. Cherry: There was another Gentleman of the Temple, but I don't know his Name.

L. C. J. What was your Business there?

Mr. Bemb. I was going home, and the Mob was there, and I got in for Shelter.

L. C. J. Who did you see at the Fire, besides the Prisoner?

Mr. Bemb. There was Nobody there, then.

L. C. J. When did you see the Prisoner first?

Mr. Bemb. It was about Eleven.

L. C. J. Were the Guards there then?

Mr. Bemb. Yes; and they had dispersed the Mob.

L. C. J. What do you mean by the Mob being dispersed? Was the Street clear? Or were they at the Sides of the Street?

Mr. Bemb. Some of the Guards rode one way, and some another; and they drove the Mob before them.

L. C. J. Were there none of the Mob in the Street?

Mr. Bemb. I saw none nearer than where the Guards had drove them on.

L. C. J. You say you saw the Prisoner there; What was he doing?

Mr. Bemb. Nothing at all.

L. C. J. Had he his Sword drawn?—*Mr. Bemb.* No.

L. C. J. When the Gentlemen came up single to him, and they talk'd to him, had he his Sword drawn?—*Mr. Bemb.* No.

L. C. J. How long after that, before the other Gentlemen came up?

Mr. Bemb. Instantly.

L. C. J. When they came to him, what said?

Mr. Bemb. They struck at him.

L. C. J. What did he do?

Mr. Bemb. I saw him do nothing, but retire back towards Long-Acre.

Mr. Major. Was any Resistance made by him to the Guards?

Mr. Bemb. No.

Then Henry Avery was sworn.

Mr. Darnell. Pray give an Account what you know of the Prisoner, the First of March last; where you saw him, and in what Condition he was.

Mr. Avery. I had been appraising some Goods for Mr Broad, and after we had done, he call'd on. Where we would go to make up the Inventory? Says I, To the Coffee-House in Green-Garden. When we had made our Inventory, Mr Broad came in, and said, He wanted Paraph. He sent for him, and he came very drunk: Soon after, I was call'd out, and left them. All I know of him is, that he was very drunk. He came to a Coach.

Then John Hollaway was sworn.

Mr. Darnell. Were you at the Tavern, when Paraph came in?

Mr. Hollaway. I was one of the Appraisers; we went afterwards to the Coffee-House, to make our Inventory.

Mr. Darn. What Condition was he in?

Mr. Hollaway. Very drunk.

Mr. Darn. How long did he stay?

Mr. Hollaway. He took part of a Quart of Wine.

Mr. Darn. What time was it?

Mr. Hollaway. It was after Nine, when he came in; and I believe it was after Ten, when he went: We came all away together.

L. C. J. Where did you go?—*Mr. Hollaway.* Home.

L. C. J. Where do you live?—*Mr. Hollaway.* I live in St. Ann's.

L. C. J. Where does Broad live?—*Mr. Hollaway.* He lives in St. Clement's.

Then James Blinfield was sworn.

Mr. Darnell. Did you see Paraph that Night? And at what Time?

Mr. Blinfield. About a Quarter after Eleven, I saw him come up Drury-Lane, towards the Fire, when the Guards were drawn up, and the Mob were gone.

Mr. Darn. Were the Mob gone, when he came to the Fire?

Mr. Blinfield. Yes; except some old Women and Children, that were not concern'd.

Mr. Darn. Who was with him?

Mr. Blinfield. There was Nobody with him; but he came to the End of Long-Acre, and had not time to stand there long, till our party came to him, and then he seem'd to lift up his Hand, to keep off the Mob; and presently, another struck at him, but he retired towards Long-Acre, and I could see no more of him.

Mr. Darn. Was he holding up his Hand, in your Opinion, any thing more than to defend himself from the Mob?

Mr. Blinfield. I believe he had no Design, but to defend himself from the Mob, and the Blow.

Mr. At. Gen. You say there was no Mob when you were there?

Mr. Blinfield. No.

Mr. At. Gen. Did you see his Sword drawn?

Mr. Blinfield. No: He lifted up his Hand, with his Sword in his Hand, but it was not drawn.

Mr. Th. Jus. What Time was this?

Mr. Blinfield. Between Eleven and Twelve o'Clock.

Mr. Th. Jus. How much after Eleven?

Mr. Blinfield. I believe, about a Quarter, or half an Hour.

Mr. Th. Jus. You say, the Guards were there, but no Mob.

Mr. Blinfield. Yes, a few Women.

Mr. Th. Jus. What did the Guards do, if there was no Mob there?

Mr. Blinfield. They rode about to disperse the Women, and other People that were there.

Mr. Th. Jus. You say, they dispers'd the Women, and the other People there. Who, other People do you mean?

Mr. Blinfield. People that I suppose were staring on: The chief Mob were gone.

Mr. Th. Jus. When you saw Paraph there, there were some other People besides the Women? Was he not among those other People, as you call them?

Mr. Blinfield. He came up by himself, and Nobody with him.

Mr. Th. Jus. Did he stand in the Street alone? Or did he join those other People?

Mr. Blinfield. There were no others to join with him.

Mr. Th. Jus. I have plain contradictoriness here.

Then Thomas Street was sworn.

Mr. Major. Did you see the Prisoner this Night the Mob was up?

T. Street. I am the Watchman that belongs to that Part: I had gone my Round at Eleven, and coming into Long-Acre, I saw two or three Gentlemen riding after the Prisoner; I stop'd over the way, to see what the Matter was, and I saw one coming at him; and he went to face the Blow, but his Sword was not drawn, but he fell against a Bulk of a Horse, at the End of Red-Lane-Court; so says one of the Gentlemen to me, Watchman, go and knock him down; so I ran after him, and overtook him: Who are you? Says I, says he, Street, it is I, I am drunk, the Guards have abused me, and cut at me: And so I saw him drunk, I let him go.

Mr. Major. What Condition was he in?

T. Street. Very drunk, that he could neither stand nor go.

Mr. Darn. Then you did not see any Reason to knock him down?

T. Street. No.

Mr. Darn. And being a Housekeeper, you let him go.

Mr. Major. Was he heading the Mob?

T. Street. No; I saw a great many of the Mob bring a great deal of the Wood to the Fire, has almost all the Mob was gone before he appear'd.

Mr. At. Gen. You say he was so drunk, he could neither stand nor go; and yet you say he went into Red-Lane-Court; How far is that from Long-Acre?

T. Street. A little way. He was very drunk.

Mr. At. Gen. I find he was not so drunk, but he knew you.

T. Street. Yes; but he could say very much.

Mr. Major. What became of him afterwards?

T. Street. I don't know indeed.

L. C. J. Does he live within your Walk?—*T. Street.* Yes.

L. C. J. Why did you not see him home?

T. Street. I was a little short in that.

L. C. J. When you fell back Notice of the Mob, what did you do?

T. Street. I got up, and went my Round, at Eleven o'Clock.

L. C. J. Your ordinary Round, as you used to do; but took no Notice of the Mob, did you?—*T. Street.* No.

L. C. J. Did you not go among them, so persuade them to go home, or complain to the Constable?

T. Street. There were Constables there present.

L. C. J. Did you see any among the Mob you knew?

T. Street. No, not one.

Mr. At. Gen. You knew Paraph, did you not?—*T. Street.* Yes.

Mr. At. Gen. And is he the only Man you know there?

T. Street. Yes, to my Knowledge.

Mr. At. Gen. Did you take up any body that Night?

T. Street. I assisted our Constable, who took up several.

L. C. J. What did you do with them?

T. Street. We carried Seven to the Watch-House.

L. C. J. What Time was that?

T. Street. About Two or Three o'Clock in the Morning.

Then John Cheekly was sworn.

Mr. Major. Did you see the Prisoner that Night the Mob was in Drury-Lane? And in what Condition was he?

J. Cheekly. My Lord, I had been at the Horse Tavern, and going up Drury Lane, near the Coffee-House, I met a great many of the Mob: They had just been pulling down a Meeting-House near Long-Acre, and presently I saw the Guards coming down very fast. When the Mob were dispers'd, I saw the Prisoner coming, with his Sword on his Arm; presently, an Officer rode up to him, and the Prisoner fell up his Sword on the Scabbard so keep off the Mob, and Elbow from him. The Gentleman rode up to him again, and then the Prisoner did the same again. With that another rode up to him, and then he went off towards Long-Acre.

Mr. Th. Jus. What was he doing, that made the Captain ride up to him?

J. Cheekly.

J. Clerkly. He was standing in a rising Place, very drunk: When they drove him to the Bull, it was as much as he could do to keep himself up.

Mr. Trench. But the Question is, What he did that made him ride up to him?—*J. Clerkly.* He did nothing at all.

Mr. Trench. Did you not see him running, or bounding with his Sword? *J. Clerkly.* No.

Tarynen. What o'Clock was it then? *J. Clerkly.* A few Minutes before I came there, I said the Watchman, What o'Clock it was? And he told me, it was half an Hour past Eleven.

L. C. J. Where do you live?—*J. Clerkly.* In Suffolk-Street.

L. C. J. What are you? *J. Clerkly.* I belong to the Sea; I have been in the Queen's Service.

L. C. J. What Ship do you belong to? *J. Clerkly.* I was paid off last October, and am now waiting for Preference.

I have been a Volunteer, with the Queen's Letter, seven Years, and a Midship-man.

Then Plaxton was sworn.

Mr. Darvall. What do you know of the Prisoner at the Bar, that Night the Mob was? Was you sent for to him?

Plaxton. I was sent for out of my Bed, between Twelve and One, to let him bleed; he was not very well: He had been abroad, and came home in Drink; and his Wife happened he had had some Flux, and sent to me to bleed him, for fear of any Mischance.

Then John Brooks was sworn.

Mr. Darvall. What do you know of the Prisoner that Night?

J. Brady. My Lord, I know nothing of this Business, but I never knew any thing, but that he believed himself very well, while I knew him.

Mr. Darvall. My Lord, we have a great many Witnesses to his Reputation, but we will not trouble your Lordship with them. We have done with our Evidence.

Tarynen. My Lord, we desire to ask a Question or two of *Raffell* and *Richardson*.

Then Richard Raffell was called again.

Tarynen. You was speaking of the Prisoner's coming down with his Sword flourishing. What Time was that?

Raffell. It was soon after we came to *Derry-Lane*.

Tarynen. How soon was it after you came?

Raffell. It was immediately. We had rode but once round the Fire, and he came as if he came from *Habern-walls*.

Tarynen. Was the Mob all gone away at that time?

Raffell. No.

Tarynen. How long was it before they were dispersed?

Raffell. It was about a Quarter of an Hour.

Tarynen. Can you judge what Time it was?

Raffell. It must be about Eleven, as near as I can guess.

Mr. At. Gen. Are you sure he had his Sword drawn?

Raffell. Yes, he should've it, and made several Pusses at us.

L. C. J. When he came in this manner, were you marching? Or did you stand with your Horses drawn up to the Wall?

Raffell. We were standing with our Horses drawn back to the Wall.

Mr. At. Gen. Which way did he come from?

Raffell. He came the way from *St. Giles's*.

Mr. At. Gen. Then he came from *Habern-walls*. That clears it. The other time, when he came up the Lane, was after they were dispersed.

L. C. J. Were you between him and *Habern-walls*, or between him and the Strand?

Raffell. He came from *St. Giles's*, and we were between him and the Strand.

Mr. Trench. How long did you for him first, before the Mob were dispersed?

Raffell. About a Quarter of an Hour.

L. C. J. You say you march'd round the Fire, and as you went of one Side of the Fire, they went of the other.

Raffell. Yes, my Lord. And afterwards we were drawn up of one Side of the Fire, and the Guards of the other.

L. C. J. When they were quite dispersed, where did you march then?

Raffell. To *St. Giles's*, and so to *Habern-walls*.

Then George Richardson was called again.

L. C. J. What Time was it that he thrust at the Officer?

Richardson. It might be about Eleven o'Clock, but I can't tell positively.

L. C. J. How soon was it after you came to the Fire?

Richardson. It was presently after I came up.

Mr. At. Gen. What Time did you come from *Whitehall*?

Richardson. Something past Ten, and we could not march fast, because we had the Foot before us.

L. C. J. Did you for him as soon as you came?

Richardson. No, there was a great Crowd of People; I rode among them, and as I came back, I saw him of the other Side: Captain *Henderson* spoke something to him, but what I know not; and then he made a Pass at the Captain, and I broke down his Point.

Parish. I desire to know which Hand I had my Sword in?

Richardson. I can't tell that.

Mr. At. Gen. Are you sure you saw his Sword drawn, and the Thrust made at the Captain?

Richardson. Yes, I am.

Then Southward was called again.

L. C. J. Can you tell about what Time it was that he was flourishing his Sword?

Southward. It was half an Hour after Ten, when we came from *Whitehall*; and, by the best Calculation I can make, it was about half an Hour after Eleven, when I saw him flourishing his Sword. I ask'd him, Are you encouraging the Mob? He answered me, Are you against *Southward*? And then I lifted up my Hand at him.

L. C. J. Where was he then?

Southward. This was above the Fire, and I saw him afterwards below the Fire. As I went to Captain *Harley* for Orders, I cast my Eye to the Corner of *Long-Acre*, and there I saw him again, in the Lane *Portico*.

L. C. J. Are you sure he had his Sword drawn in both Places?

Southward. I am sure of it.

L. C. J. How long might it be between the two Times you met him?

Southward. A very little Time.

Parish. Which hand was his Sword in?

Southward. In your Left Hand.

Mr. Trench. Was it immediately upon your coming into *Derry-Lane*, that you spoke to him?

Southward. Not immediately upon our coming there.

Mr. Trench. How long did you stay at that Fire, before you dispersed the Mob?

Southward. It might be more than a Quarter of an Hour.

Mr. Darvall. We have done with our Evidence on both Sides. I beg Leave to make a few Observations upon the Evidence in Behalf of the Prisoner.

We think, my Lord, though he is a Bailiff, (for there seems to be some Reflection cast upon him for that Reason) yet we doubt not, but he will have the same Justice done him here, as if he were a Man of the best Estate: For whatever is determined as to this Man, may be the Case of any other who may happen into the like Circumstances.

Therefore I beg leave to observe, how far any thing is proved against him, that may make him guilty of High-Treason. We think we have given a full Answer to all the Prosecution, that he was engaged in the original Intention of pulling down the Meeting-Houses, or that he was aiding in the Execution of that original Intention. We think the Evidence on both Sides agree in this, That the Prisoner was not concerned in the original Intention; and that he was not with the Mob that pulled *Dr. Southward* to *Whitehall*, and brought him back in Triumph, and then were to pull down the Meeting-Houses: But the only Thing that is proved against him is, that after they were pull'd down, and after they were burnt, when the Guards were come, and they were dispersing the Mob, then the Prisoner is so unfortunate to be found with his Sword drawn, hallooing, and attempting the Right of *Dr. Southward*, and that he would stand by him, and encouraging the People to do so.

This is the most of the Evidence that can be against him: Then the Question is, Whether this, singly, can make him guilty of High-Treason? For if in Part in the general Intention be out of the Case, as it must be if he came after the Fact was committed, then the Question will be, Whether a Man that comes in afterwards, by saying the worst he can say, shall make himself guilty of High-Treason?

My Lord, we hope the Evidence on Behalf of the Queen is irreconcilable with the Evidence for the Prisoner; and that the Evidence for the Prisoner shall be believed, that he only defended himself against the Guards that rode up against him: For *Richardson* says, he did not see him when the Guards first came there, and that agree with the Account that *Yves* gave, for he says he heard the Guard were marching before they came out of the Tavern. *Blackfield* agrees with the Evidence that *Yves* gave: Says he, The Mob were dispersed under the Eaves of the Houses. Says *Blackfield*, At the Time the Guards broke him, there were People under the Houses: But I don't look upon them to be the chief Mob, but only some Women and People looking on. And then the Question is not, Whether his sword was drawn or not, but on what Occasion, and what his Design was in drawing it? Our Witnesses say, that when the Guards break at him, he only held up his Hand to defend himself, and that might fright the Horse, and he being angry at it, spurred up and broke him.

It is natural to think the Guards should not up to those that were standing in the Street, and enquire who they were. I don't depend on the Circumstance of his being in Drink, that it is any Excuse, for then if a Man has such a Design as this, he may easily pretend himself to be in Drink, and he will give himself Credit enough to encourage himself to do so before an Act: But the use we make of it is to show, that he had not any Intention on this. He had drank himself too far to have a Design of joining with any Party, or to do any particular Thing. And my Lord *Cole*, in his Plea of the Crown, where he is giving his Opinion what is saying War against the Queen, says, that the Act alone is not sufficient to convict the Party; but the Mind is to concur in it. It is not barely doing an Act that is sufficient to convict a Man; for he must do it with that Design. Indeed if a drunken Man does another, it is blunder because *Mulder* is happened where such a Fact is done. But in Case of High-Treason there must be an Intention proved in the Party that doth the Fact. If he was in that Condition at the Time he came out of the Tavern, and did any thing by way of encouraging them, we hope it is not such an Evidence against him as will make him guilty of any Part of the Intention, if his Mind did not concur in it.

Mr. Just. Fry. My Lord *Cole* says, in the Case of *Olden*, where he was forced, and did the Fact *pro nomine*, that such an Act could not make him guilty.

Mr. Major. My Lord, we hope the Evidence is not sufficient to induce the Jury to believe he was concerned in the general Intention to pull down the Meeting-Houses; there is no Proof offered that he had any Intention or Part in that Intention; nor does it appear that he was *pro nomine*. We have shown where he was till the Time he was met by the Guards. As for what was done by him then, it will not be pretended, that barely assisting the Guards in levelling War; but it must be confined to be an aiding and assisting those Persons at that Intention to pull down the Meeting-Houses. As for that, it doesn't appear he had any Part in it, but it was done before he came to them. Nay, he could not be assisting to the Mob; for before he came to them, the Guards were come down, and the Mob were soon after dispersed. The first Time that any Account is given of him is, when he came behind the Grenadiers. Now can it be supposed that any Man that stands to head the Mob would come among the Houses, and that singly? Whatever he did, his Curling and swearing that will not make him criminal in this Case. It appears to be a thing that was accidental and done on a sudden, and was the Effect of his Drink, and that which a Man that had no Intention of joining in the general Design might be guilty of.

Mr. Mr. Geo. May it pleases your Lordship, and Gentlemen of the Jury, we think that, notwithstanding any Thing that has been said by the Witnesses, or implied on by the Counsel, in a plain Case that the Prisoner is guilty of the Crime laid to his Charge. They have called a great Number of Witnesses; and I believe their Intention in that is, that you should take them by Tale, and not by weighing the Evidence and the Force of it, for I will be bold to say, as to all the Witnesses that have been produced to prove him drunk, nothing which they have said as to that Point can make any Alteration in the Case. As to the Witnesses produced for the Queen, I don't find they pretend to say any Thing in Disposition of the Credit of them; nor can they say that any one of them is likely to be misled, or to be under a Mistake; only one of them that took him to be a Country Gentleman, when he proved to be a Bailiff. As *Mr. Daniel* says, God forbid that any one should have better Knowledge than he is a Bailiff, but that he should have the same Justice as any other Man; but I think for, in an easy Mistake to take him for a Gentleman, when it appears by the Evidence, that one Bailiff can go to the Tavern in his Coach, and the other go from thence in his Chair. The Counsel for the Prisoner have insisted, that our Evidence don't maintain the Charge; for they say this Rising is not High-Treason, if there were not a general Intent to pull down Meeting-Houses. And we don't bring it home, to make it appear that he was *privy* or consenting to this Design; but we desire they will consider, the full Witnes give an Account that a Resolution was taken on Tuesday to pull down *Bury's* Meeting: By whom was that taken? It was by the Friends of *Saunders* that came hallooing with him. Who is it afterwards that pulled them down? That is the halloo and cry out for High-Church and *Saunders*. What did the Prisoner say when he was among them? Does then, he was for High-Church and *Saunders*, he would lose his Life in the Cause. It is certain their Meeting-Houses were pulled down, and that by their People thus assembled, and who cried out for *Saunders*, and were the Friends of *Saunders*, and declared they would oppose all that were Enemies to him, and this Man cried out as loud as any of them. But we don't take it that it is necessary to prove, that every Man that was concerned in this Matter was originally in the Consult and first Design; but the Evidence gives an Account, that he joined with them, he assisted them. If drawing his Sword; if flourishing it, and telling out to them to resist the Guards, and pulling at the Office of the Guards, is resisting, that is sufficient Proof against him. If a rebellious Number of his People are got together, and a Man, that knows not of it at all, will join with them, and act with them, and that which they are doing is Treason, as though he came in late of the Day, he must deserve the same Reward as those that came in early in the Day.

There is one Thing observable in this Case, that this Meeting-House was not so soon destroyed as *Dr. Bury's*; for the Fire was almost out there, when the Waterman, who is convicted, hallooed them to this Meeting; it was then burnt full, and then they came to this Fire, and that was much later. It appears he lives in the Neighbourhood of this Meeting-House; for he says he can hear them lose his House: Now a Man that had been in the Neighbourhood of such a Place, and had been a good Subject, if there had been a tumultuous Design to pull down Part of his Neighbourhood, instead of joining with those People, he would have endeavoured to have hindered them from doing Mischief, but instead of endeavouring to prevent it, you find he joins with them, he draws and flourishes his sword, and acts in it more than any other Person I have had an Account of. The other Witnesses are to give an Account where he was till Five in the Afternoon, and thence till Eight at Night; and afterwards he is sent for by *Mr. Broad*, and with him he stays till this Matter is transacted. The Place he has been at before, are the Ale-House, the Brandy-Shop, and the Tavern: Are not these the proper Places to prepare those that are to engage in their Sort of Things? For whenever People go to these Antennas, it is necessary to furnish them, either by strong Waters, and strong Liquors, as he does. The Witnesses that saw him there, and give an Account of his, found of them say, he only held up his Hand; others say, he had a Sword in his Hand, but it was not drawn, and he held it up only to save himself from the Assault of the Guards. Now the Account you have is, that the Guards struck with the Flats of their Swords, and you hear of Nobody killed, nor any great Harm done to any body; therefore it is not to be thought they should, without Provocation, fall upon this Man, and attack him. As to the Evidence of Time, there is little Weight to be laid on it, for the whole Transaction don't take up above the Compass of two Hours. The Guards come out about half an hour after Ten, and before Twelve the halloo is dispersed. But that which will take into Consideration will be the Series of the Facts, and see how they stand. *Over* says, he saw the Prisoner with his Sword drawn, and flourishing it, and when the Guards came, he assaulted them in the Manner you have heard of; and they have said nothing to impeach our Evidence; what they say makes it appear he was there, and thus acting among them.

Mr. Ser. Geo. May Lord, the Evidence given by the Prisoner, and the Defence made on his Behalf, is so far from giving any Answer to our Evidence, that it renders the Fact more probable than it was before: For they have proved, that he is a Man likely to be concerned in such an Affair; that he had been drinking all Day, and fit to engage in such a Matter; and that he is troublesome in his Drink; which are Circumstances that drive the Inclination of the Man, and make it probable that he should engage in this Matter. The Facts we take to be High-Treason.

They say on the other Side, it is not so, because we must prove a general Intent to pull down all Meeting-Houses, and the pulling down a single one is not sufficient. I will not now dispute that point with them; for that there was such an Intention appears most plainly by what passed that Night, by the several Meeting-Houses that were pulled down. It was a general Intention, or else they could not have gone through so many in so short a Time: And it is not necessary to prove any previous Consult, for the Act itself is Treason. Where the Intention is the Treason, there the Act itself be proved that shows it. So it

is in the Case of counterfeiting the Coin, Nobody will say there is any need to prove any Design: That there was such an Intention is plain, by what was concerted; and any one that joins with such a Number of People who are committing Treason, is equally guilty with them. If he knew nothing of it till he saw them, yet if he joins with them in an Action that is Treason, he will be equally guilty with them. They say he had his sword drawn; that he was going home; and he only lifted up his Hand, with his Sword in his Scabbard, as *deposed* himself. But that Evidence don't interfere with what is offered on Behalf of the Queen; or if it did, yet we think our Evidence is of greater Credit and Weight than what they offer: For they that encounter a Man who has his Sword drawn, can never be mistaken, but deserve more Credit than those that are only pulling by, and have no Danger from, or Concern with him; but this is all consistent, for *Rogel*, and those who say he was drawn, say, he came from *St. Gilo's* way, the others say, it was after the Mob was dispersed; and that he came up the Lane; and that he went off by *Long-acre*, and they fear him no more. Now, since Nobody for him home, he might go that Way, and afterwards come down and join the Mob, in the Manner the Soldiers have told you, and then he might be driven off, and come some way round again, with his Sword in his Scabbard: And these must certainly be different Times, for those who speak of his sword being drawn, say, it was when he came from *Holborn*; and they that say his Sword was in his Scabbard, say, it was when he came from the other way, and then there can be no Contradiction between the Evidence. And we take it, the Law is so plain as the Fact, and that is High-Treason.

Mr. Thynne My Lord, I would state the Objection in the utmost Latitude, and yet, with Submission, the Facts proved on the Prisoner make him guilty of High-Treason. They have insisted, that there was no previous Intention in this Man to pull down these Meeting-Houses; that at that Time he was in Drink, and not capable to have any Intention of doing any particular Act whatever, and that to the aiding and assisting *Moss* must be *res*; and that he came when the Meeting-House (the Materials of which made the Fire in *Drury-Lane*) was pulled down, and all was over, and to neither in the first Design, nor assisting at the Execution of it. They, my Lord, I take to be the Strength of their Objections. As to the previous Intention, that is not necessary to be proved, and has been so long decerned, that I need not trouble your Lordship to repeat any Thing about it. I shall only say, my Understanding of this Kind of case is general, though he comes by Accident, it must be him a Principal in this Matter. Then they would make use of his Drunkenness, to excuse him from his assisting in the Design; they say, if he had not his Sword, he could have no Intention even to aid or assist any Design. Those Gentlemen know very well, that Drunkenness is no Excuse for any Act whatever: If a man does deprive himself of his Senses, and commits a Fact that would be a Crime in a Man not in Drink, it shall be construed to be his Act, as much as if he had his Senses. *Reverdy's* Case, in the 4th Report, is express in that Point. Then they say, the Meeting-House was pulled down before, and he came when all was over. My Lord, I appeal to the Memory of your Lordship, and the Jury, whether they were not mistaken in that Fact, for the Fire was burning when he came, and the Mob about it, they were then burning the House of that Meeting-House which they had pulled down; and if they had not been dispersed, as all Probability would have gone on with their Design; and he was then when the Guards were endeavouring to disperse them, and prevent their going on to do further Mischief, and to assist them. They say, there was no Resolution made by the Mob, they were quiet; but this Man did resist, he pulled at the Horses, and at the Men, if you will give Credit to the Witnesses; and he did it as much as was in his Power to animate and encourage the Mob to resist. By his Encouragement, and his assistance, he endeavoured to hinder the dispersing of that Mob, who were executing a treasonable Design. That is the aiding and assisting of them, which is his Crime. Then they say, he was there accidentally, and fell in as he was going home quietly. I take that to be otherwise on the Evidence; for however he might be left by *Mr. Broad*, he was seen coming down *St. Gilo's*, whereas his Way home was the other Way. We must submit it, my Lord, whether his aiding and assisting in this Manner, does not make him guilty of Treason, as well as those who were executing the treasonable Design.

L. C. J. Gentlemen of the Jury, *George Partridge* stands indicted, for that he, with a great multitude of other Persons named, did, the first of March last, levy open War against her Majesty. The Evidence that has been given by the Queen's Counsel, tends to shew a Design to pull down the Meeting-Houses about this Town, and that Design executed on a great many of them: The Guards coming to disperse those that were employed, and the Prisoner resisting the Guards, joining with the Mob, and assisting them. To prove this, they produce *Toby* to give an Account of a Discourse, rather beginning thus finished, of a Design of pulling down *Mr. Bury's* Meeting-House; some were for pulling it down immediately, others were for deferring it till the Morrow, and others for letting it alone till the Trial was over: And as they were thus talking, he left them. He calls it a Reluctance of pulling them down, because Nobody did oppose it, only differed about the Time, but he did not tell them they were to pull down these Meeting-Houses. The next Witness is *Gerald*, who gives you a very particular History of this Action: He tells you, in *Long-acre's* Coffee-House he had heard that they were pulling down *St. Gilo's* Meeting-House; that he went into that Meeting-House to see to see how they were pulling it down, and thence they went to *Drury-Lane*; that they had almost finished the Work there, he found almost every thing there down, and they were carrying the Materials to *Holborn*, and burning them: Thence they went to *Leicester-fen-Field*, and there they found a Fire, where they were burning the Materials of *Mr. Langley's* Meeting-House. He tells you what Quizzes there were there, some of them called them to *Drury-Lane*, and a Consult that was, Whether they should go thither, or to *West-Smith*: That some that headed the Mob, swore they would have all the Meeting-Houses down, and called

them along, and led them to *Druy-Law*; that when he came there, he found them breaking down the Door of that Meeting-House. He tells you what pass'd there; that he went afterwards, and met the Guards, conducted them to *Druy-Law*, and ran before them; that the Horse were commanded to disperse the Mob; that he saw one with a Sword, that was threatening himself under the Houses, and there he push'd at the Horse with his Sword. His Expression is, that he poked; he did not make a regular Push, but poked at them; that several of them struck at him, and drove him from among them; that afterwards he saw him stand at the End of *Lang-Arr*; that he went to him, and persuaded him to go home, but he did not think fit to go home; but when the Guards came up, he resisted them: Says the Witness to him, Do you consider what you do in opposing the Guards? You, in effect, oppose the Queen: What is his Answer? It was, Damsy you, Are you against *Sunderland*? Thereupon, he cries out, High-Church and *Sunderland*? He would fight the Guards, and he would lose his Life in the Cause, with such like Expressions, which he repeated several times, and shewn how volatile he was in the Matter. He tells you, that he secretly made a full Pail at one of the Officers, as he was partly push'd by him, pointing towards his Flank; and he apprehends he must have run him through, but that another Soldier threw down his Point; that then the Soldier struck at him, and the Witness apprehending it might produce more Blood, and that there might be firing, he thought fit to retire: That he went down the Street, and the Mob were forced by them that way, and he heard some of them declaring, We will be even with them To-morrow Night, for they dare not see upon us. He gives you an Account of the Place where he fell saw this Mob, which was over-against the Provost's, at the Corner of *Queen's-Street*, which is between *Lang-Arr* and *St. Gild's*.

The next Witness is *Raghd*, who is one of the Horse-Grenadiers, and one of the first Body that came into the Lane. He says, they were commanded to disperse the Mob, and to take Care to place themselves to against the Houses that Nobody should come behind them; and that they should hinder any body from passing before them. That Direction was prudent and necessary; for if they had stood so, that the Mob might have come behind them, they would soon have had them off their Horses. He tells you, that the Prisoner came down towards *St. Gild's*, as they were drawn up in this Manner, with the Horse Tail to the Wall. He tells you, this man did not think fit to pass before the Horse in the open Street, but had a Mind to get in behind the Horse, and did get past one of them, but the Witness's Horse being drawn back between two Balles, he could go no further, and the Witness beat him out: That afterwards he came at the Head of the Mob, and flourish'd his Sword, and swore, Damsy you, who are you for? Are you against *Sunderland*? He takes Notice, that as they dispersed the Mob of one Side, they gather'd on the other for a while; and it was about a Quarter of an Hour before they had quite dispersed them.

The next is *Sunderland*. He tells you, that he saw him several Times; that he drew up his Grenadier at the End of *Queen's-Street*, and he commanded them to draw back, so that none might come behind them; that he saw the Prisoner flourishing his Sword, and held out the Point to him, but did not make a Push; then, he says, he left him for a while, but afterwards, when the grenadier Part were dispersed, he saw him standing over-against *Lang-Arr*, with his Sword in his Hand, and told the Captain he had been troublesome to him before, and the Captain, thereupon, bid him cut him to Pieces, as his Expression was; that they rode up to him, but the Prisoner made his Escape into *Lang-Arr*.

The next is *Richardson*: He is a Trooper in the Third Troop of Guards: He tells you, that he remembers the Prisoner, when he rode in the First Troop; and that he knew him abroad, and here. He gives you an Account in what Manner they march'd; that at the Corner of the Street, Captain *Haythorpe*, (whom he believes the Prisoner must know, because he was in the Guards at the same Time) spoke to him, but what he said the Witness don't know; but as he pass'd by him, the Prisoner thrust at him, and the Witness apprehending he intended to kill the Captain, he beat down the Point of his Sword, and struck at him with his Sword, but the Prisoner hitting against the Point-house, his Blade broke in Pieces. This is the Substance of the Evidence for the Queen, and, if there be no Answer made to it, proves him to be afflicting this Mob, and opposing the Guards, and attempting to kill the Captain, and taking the best Advantage so to do, as he pass'd by him.

On the Prisoner's Side, they have produced several Witnesses, a great many in Number. They begin with him the Morning, and gave an Account, That in the Morning he came to *Starr-Lane* to execute a Writ, and about Twelve the Money was paid, and then they parted.

The next Witness is *Jacobine*, he says, they parted at half an Hour after Eleven; so that there two differ in their Accounts about half an Hour; for one says they parted at Twelve, and the other says, at half an Hour after Eleven: This I take Notice of only to shew an Uncertainty as to the Time.

Benjamin Holden is the next; he says he went with the last Witness, and the Prisoner, to the Army; and they parted at Twelve, and not again at Two. One says they make of this Evidence to have, that he was not in any Cabal that Day, for they knew how he employed his Time: But you will observe, there are two Hours, from Twelve till Two, which they give no Account of; though they pretend to shew where he was all the Day. This Witness says, they parted about Four or Five o'Clock, and then the Prisoner went to *Green's Brandy-Shop*: *Low* says, he drank at his Mother's House till past Five, and then they went to the *Hero's* Tavern, and came back to the Brandy-Shop about Eight, and continued drinking there about an Hour.

The next Witness is *Dapper*, who keeps the Tavern; he says, they came to his House about Five or Six o'Clock, and went before Nine; and finishes you, that during all that time they were in his House: *Rock* went home with him from *Green's*. I should take Notice, that all these say he was drunk. She says, she got him home, but then he was sent for by

Mr. *Brady*: He was much in Drink, and they got a Coach, and another went with him to let him there. *Low* says, he was in Drink; and when it was proposed for him to go to Mr. *Brady*, there said, it was not fit for him to go, because he was in Drink; and this Witness went with him, to let him live there. Mr. *Brady* tell you the Occasion of being at the Tavern; some Goods were taken in Execution, and as they were making an Inventory, a Warrant was brought to him against a Gentleman, and he sent to the Prisoner for his Assistance, but he was so drunk he did not think him fit for himself, and bid him go home again; which he would not do, unless he would give him a Pint of Wine. When they came away, he told Mr. *Brady* it was a noisome Night, and he would let him home, and finished he was drunk, and would make him go into a Chair, and then the Prisoner went towards *Druy-Law* in order to go home.

The next is *Rembridge*, he first, he was at an Old-Shop, at *Lang-Arr* End, that about Eleven the Guards dispersed the Mob; that afterwards the Prisoner flock'd at the End of *Lang-Arr*, and an Officer rode up to him, that the Mob was then dispersed, and the Officer having spoke to him, some others struck at him, and forced him away; he saw no Sword at all that the Prisoner had. *Army* says, he was with *Brady* when the Prisoner came in, and says he was drunk. *Halway*, the Appraiser, says, the Prisoner was drunk, and that he went away with Mr. *Brady* and him; and tells you, it was after Ten when they parted. Then *Stratton* tells you, he saw him a quarter after Eleven come up the Lane towards the Fire; that he came all alone; that one of the Guards pass'd up to him, and some of them struck at him, but he did not strike at them, but seem'd to lift up his Hand to prevent the Horse from coming upon him. The Watchman tells you, it was a quarter after Eleven; that the Guards struck at him, but he got up the Court, and they sent the Watchman after him to knock him down, but he knowing him, did not think fit to do it. *Choddy* says, That at the *Coffin* Tavern he met the Mob, and some of the Guards rode up to the Prisoner, but the Mob was gone a quarter of an Hour before; and says, that the Prisoner had no Sword. *Plumers* only says, that he was sent for that Night to let him blood: And *Brady* gives *Brady* Account of his Behaviour.

The Matter will be now for you to compare these two Evidences together; and to consider, first, whether these things are true which are told by the Queen's Witnesses, or whether they are answered by the Witnesses for the Prisoner; and then what *Stark* is to be laid upon his being in Drink: And as there is no Objection made to the Witnesses of either Side, you are to take what they have said to be true, abating the little Mistake a Man may fall into as to the Exactness of Time, and the like. As to what they would pretend, of his going straight home from the Tavern, you will observe there is time enough for him to have done all that he is charged with, for it all happened in a quarter of an Hour, or a little more. If he parted from the Tavern about Ten; from that time till a quarter or half an Hour after Eleven is time enough to do all that has been spoken of. I think there is little *Stark*, so he laid upon the Time, because there is a Series of Facts: The first thing done by him, before the Mob was dispersed, was his coming behind the Horse, and you will find the Reason for that Command of the Officer to let some come behind him: But he, as drunk as he was, knew there was no hurting the Guards, unless they could get behind them. He had been in the Guards himself, and you must consider what Design he had in getting behind them, when the Street was open for him to go in. But if he had a Design to get behind them, that the Mob might pull them off from their Horses, he acted very rationally, though he was drunk. This Fact was proved by *Orwell* and *Raghd*. Another Fact was, when they were drawn up above the Fire near *St. Gild's*, he was then coming down from *St. Gild's*: So that this is plain; not the Time that the Witnesses speak of when he was coming up the Lane. Then this was only when the Horse-Grenadiers were there; and the other was when the Horse-Guards came, when they were drawn up below *Lang-Arr*; and there they threw he made a Push at Captain *Haythorpe*: And *Raghd* tells you, that as he sheltered himself under the Houses, his Sword struck against the Point-house, and broke to pieces. *Sunderland* speaks of another time when he was at the Corner of *Lang-Arr*, and then indeed he was doing nothing: And that is the time when he told the Captain that he had been troublesome to the Grenadiers; thereupon the Captain bid him go and cut him to pieces: He did go, and then the Prisoner made off: But this was when the Mob was in a great measure dispersed. Now when do his Witnesses speak of? They speak of a time when he came up the Lane. That finally is not the time that either of these Witnesses speak of: They say he fled quiet, and a Soldier rode up to him, and struck him. You will consider whether that was not the time that *Sunderland* speaks of. So that you will consider whether the Evidence of both Sides is not reconcilable; whether after he parted from *Brady*, he might not join the Mob, come down from towards *St. Gild's*, get behind the Horse, and afterwards make a Push at the Captain, and then be driven down with the Mob towards the lower End of the Street: If so, it was natural, when they were driven down the Lane, for them to go home; and as his home was up the Lane, he must come back alone. If you believe he was guilty of resisting the Guards in this manner, when he was afterwards what the Consequence was, what he, instead of making an Answer, only says, Are you an Enemy to *Sunderland*? and answers that the Mob to follow him; you are to consider how far this will make him guilty with the rest: For the Council for the Prisoner, though they object to the Evidence of what pass'd in the Temple, yet they agree this Tumult was a rebellious Tumult; and the Fact shews there was such a Design. Indeed they did not pull down all the Meeting-Houses; but the Reason was, because the Guards dispersed them. They admit therefore this was keeping War in the Parish concerned in it, but they would excuse him, that he came late and very drunk, and did nothing, but was beat by the Guards; and that his Drunkenness disabled him from having a Share in the Design; and therefore he can't be guilty. It is insisted, that it is necessary he should be engaged in the original Design. But there is no need of that; for that is the Last of *Edgar's* Cafe: It is there adjudged, that

any good Service; by defraying him, Money is it necessary to those who
 Embrace we have to give to you, and tell you what Preparation (in
 comes out) that this fellow made; and it is very proper, because that per-
 son all through this day of the Poor once whereby to show a Dull at your
 Eye, to extenuate the Crime, that he had such like a Madman; he had
 a mind and volatile Idiot, and used all proper Means to effect it.

Gentlemen, though he should be a wicked Man, void of Reason, you
 will have little Reason to think he should be a Madman.

My Lord, that to give to him from Rome, every wicked Man may be said
 to be a Madman, but I hope that Bull was thrown all that is ill, and first
 and every other from Parliament.

My Lord, the Morning time supposed he went to the House of one
 See &c, and had a Quarter of a Pound of Powder, and a Pistol of black,
 and the Pistol directed them to No. 2, and gave him that Box which
 was a larger box than he used to have; and it seems he is a Marksmen,
 as you will hear; it was always his Business to aim at the Head.

He had the Powder and the Box; and that Morning he was at his own,
 who hearing him discharge his Gun, asked what he had been doing, what
 he had killed, as you will hear from one of the Witnesses. Says he, I
 only did it to discharge my Gun. Gentlemen, this is to show that the
 Pistol was fired in him, and he would meet with no Disappointment,
 but that he Purge it might take it.

You know, a Gun that hath
 been charged some Time, and had by, some Wet or Damp may happen
 to be so prevent its going off, or one is so hinder that he will discharge
 his Gun, and then loads again, that he might be secure of its going off.

And after he had this paid off himself, the next Thing was to be ap-
 pointed which was my Lord was going, which Way the Dogs went: He
 was asked the Reason, Are you going a hunting? He tells out into a
 Rage, that my Lord Ogle was an Enemy to his Country; and if he
 could meet him, he would shoot him. Within a few Minutes afterwards
 this Noble Lord with his Company, as I have mentioned, came by. The
 Man being prepared, discharged his Gun, and executed his wicked
 Design. My Lord, this is the Nature of the Thing, and this coming to
 his Master's Ear, he could not but be concerned that those who appeared
 eminent and great in his Service should meet with such Treatment.

Therefore he immediately took Directions to see his own servants ap-
 pointed in the City, to be at his Right hand; And if we make use
 to this to be a Thing, that is a No. 1 of blackness or Foulness of Words
 to settle you, we shall have a Thing to work up your Passions, or to
 speak to do Rage between the King and the Prisoner, which is
 all we want.

Mr. Sergeant Whistler. May I please your Lordship, and you, Gen-
 tlemen of the Jury, I am Counsel in this Case for the King; and though
 we have the Honour to serve the King, yet we desire nothing but ac-
 cording to the rules of Justice. If the Evidence finally say, that
 the Prisoner, this Man, is guilty, then we expect you find him so, if it
 is not sufficient, nothing said by in these witnesses, you do not know.

Therefore whether the Man is guilty, and a Piece of it is the Matter
 which is to be laid before you, we won't say my Manner of Persecution
 one Way or other, but plainly lay the Fact before you.

Gentlemen, this Man is indicted upon an Act of Parliament passed
 the last Session, and this Act of Parliament every body thinks a necessary
 Act, and is so, it is a just and good Act, and if it be just and good, it is
 fit it should be put in Execution when it is transgressed. Gentlemen, I
 shall take up little more of your Time than only to state one or two Facts,
 which we shall farther lay before you.

When the Wound was given to this Noble Lord, there was some Dis-
 course with him about it, and among the rest one Gentleman, you will
 observe, who was in Company, and riding by my Lord Ogle, asked him,
 How came it to pass, he had not that time? Sir, says he, you are an
 ignorant Man. This we make use of to their two Purposes: The one
 to show that he had particular Malice against my Lord Ogle, upon
 what Occasion hath been opened by my Brother, and I shall not repeat
 it: The other, to show that this was done with great Deliberation, and
 done against this Noble Lord. Gentlemen, then farther, when it comes
 to be inquired of him afterwards, when he seemed to be cool, How came
 you to do that? and, it's said he should be guilty of such an Act, he
 says, How can I concern for me; I shall answer for it. Gentlemen, this
 Thing shows that he had no Manner of Remorse, not the least. One
 would have thought, in case of Pardon and Revenge, when People had
 wronged their Masters, they would come to repent, and be concerned, but
 instead of that, it appears, by his Discourse afterwards, he had not the
 least Concern or Remorse.

Then as to his Preparation for this Fact, it had all the Deliberation in
 it as could be: He goes to a Shop where he used to buy his Powder and
 Shot; but they happen not to provide him with so large a Shot as he ex-
 pected; he at that Time asked for the largest Shot; the Master of the
 House was not within, but the Mistress was; says he, Go and fetch
 No. 2, which proved not to be so large as he would have had. No 2
 is looked out for him, and he buys a Quarter of a Pound of Powder and a
 Pound of this Shot.

This Evidence we shall give, and add to what hath been opened al-
 ready, and then we shall leave it to your Conferences and your Judgment;
 whether we have not sufficiently proved the Charge in the Indictment;
 and if we have, we shall appeal to your Judgment, and to your Con-
 sciences, what Verdict to bring in.

Mr. Sergeant Whistler. My Lord, we shall beg leave to call our Witnesses.
 Mr. Fletcher joins.

Mr. Serj. Chelyer. Sir, will you tell my Lord and the Jury—Give an
 Account of what passed when this Fact was committed.

Mr. Justice Tracy. Did the Prisoner come up.
 King's Counsel. We desire he may.

Mr. Justice Tracy. (To the Prisoner.) As all the Witnesses come, if
 you have any Question to ask, put it to me, and I will ask your Question
 for you; I will give you all the Assistance that lies in my Power.

Mr. Fletcher. As we were coming back from Hunting with my Lord
 Ogle, we came into a narrow Lane, a sandy Lane near Gainsford, and

Lord Ogle was on my right Hand, I was even with him; I saw a Man
 coming, up towards us, this Man, the Prisoner, and I saw he had his
 Gun cocked, he was near.

Mr. Serj. Chelyer. Did you say any Thing to him?

Mr. Fletcher. When he came to my Lord's Head, his Countenance
 changed pale; then I asked him, why he carried his Gun so that Man-
 ner? He made no Answer, but immediately turned short, and shot my Lord.

Mr. Serj. Chelyer. In what Place was it? What is the Name of the
 Place?

Mr. Fletcher. I don't know the Name of the Lane, it is near Katherine's
 Hill.

Mr. Serj. Chelyer. In what Parish is it?

Mr. Fletcher. St. Nicholas's Parish.

Mr. Serj. Chelyer. What was the Effect of his Shooting?

Mr. Fletcher. My Lord Ogle fell off his Horse on his Face; my Lord
 started at the Gun going off; but as soon as I could turn him, and come
 up, I saw the Blood come; and I said, My Lord, I will go to Gainsford,
 and get some Surgeons; and accordingly I went.

Mr. Fletcher. What became of the Prisoner?

Mr. Fletcher. He walked up the sandy Way; but I can't tell what be-
 came of him, because I was gone for the Surgeon.

Mr. Serj. Chelyer. Would you ask this Witness any Question?

Mr. Justice Tracy. But to what you tell me what Question you would
 have asked, I will ask it.

Mr. Fletcher. I don't know. Ask him yourself, if you have a Mind to it.
 I don't know, I said to go that Way every Day. I am sorry for what
 is done, and I can't think how I came to take that Way.

Mr. Serj. Chelyer. The Deed walked with him, stood at his right
 Hand, and directed him.

Mr. Fletcher joins.

Mr. Serj. Whistler. Mr. Fletcher, pray give an Account of what hap-
 pened on this 21st of August, as you was returning from Hunting with
 my Lord Ogle.

Mr. Fletcher. We met the Prisoner at the Bar, Edward Arnold.

Mr. Serj. Whistler. Was you near my Lord?

Mr. Serj. Chelyer. How did you meet?

Mr. Fletcher. I was behind him, Fletcher.

Mr. Serj. Chelyer. You were pretty near together?

Mr. Fletcher. Yes, very near.

Mr. Serj. Chelyer. What did you observe?

Mr. Fletcher. We met this Man coming up the Lane. I saw him per-
 form his Piece, he took Aim, and shot my Lord. My Lord fell off from
 his Horse.

Mr. Serj. Chelyer. What did you do?

Mr. Fletcher. I went to see whether my Lord was dead: I saw he was
 not dead; and the Prisoner made off.

Mr. Serj. Chelyer. In what Manner did the Prisoner make off? Did he
 walk or run?

Mr. Fletcher. He did not run. I rid after him, and rode him against the
 Bank: You William, said I, you have killed my Lord: you will be
 hanged for it. You won't hang me to day, will you? says he. No, not
 to day, but you will be hanged.

Mr. Serj. Chelyer. How was his Countenance?

Mr. Fletcher. Very pale and confused.

Mr. Serj. Chelyer. Did he surrender himself to you, or make any Resis-
 tance?

Mr. Fletcher. He told me, he would charge again; No, says I, you
 shall not. Then I added out to another Man to ride him, one Green: When
 he came, I said, This William hath shot my Lord Ogle.

Mr. Justice Tracy. Did the Prisoner Arnold say he would charge again?

Mr. Fletcher. He said he would charge again; but he could not, for
 he had no Time.

Mr. Serj. Chelyer. How far was the Prisoner got from the Place where
 he shot my Lord?

Mr. Fletcher. About thirty Yards.

Mr. Serj. Chelyer. What did you do?

Mr. Fletcher. I brought him back to my Lord.

Mr. Serj. Chelyer. What happened then when you brought him to my
 Lord?

Mr. Fletcher. When I brought him in Sight of my Lord, says my Lord,
 You William, you have killed me.

Mr. Serj. Chelyer. What did he say to—Mr. Fletcher. He said nothing.
 Mr. Serj. Chelyer. Did he seem to struggle?

Mr. Fletcher. He did seem to struggle, so firm to come at my Lord, as
 I thought.

Mr. Justice Tracy. What did you think?

Mr. Fletcher. When he was brought by my Lord, he struggled, and
 seemed to strive to come at him. Says I, Mr. Green, take him away, for
 he is coming at my Lord again: I thought so.

Mr. Justice Tracy. Had he his Gun?

Mr. Fletcher. His Gun was taken away from him.

Mr. Fletcher. You say you rid behind Mr. Fletcher and my Lord; what
 Distance was there between you and them?

Mr. Fletcher. My Lord and Mr. Fletcher rode abreast; I was behind, I
 believe, about two or three Yards.

Mr. Fletcher. If I understood you right, you say you saw the Prisoner
 aim at my Lord; did you see him aim at my Lord Ogle?

Mr. Fletcher. I see him aim at my Lord Ogle.

Mr. Serj. Chelyer. In what Manner did he seem to level? Towards his
 Head, or how?—Mr. Fletcher. I thought it was towards his Head.
 Mr. Serj. Chelyer. Where did he shoot him?

Mr. Serj. Chelyer. In the left Shoulder.

Mr. Serj. Chelyer. Pray now, will you ask this Witness any Question?

Prisoner. I don't know what to say to him.

Mr. John Fawkes joins.

Mr. Serj. Chelyer. Sir, will you tell my Lord and the Jury, while you
 was in Company, and attending my Lord Ogle from Hunting, what
 happened when this tragical Fact was committed.

Mr.

Mr. *Faulstich*. My Lord, returning from Hunting with my Lord *Oxley*, coming down this Lane where this Accident happened, I signed Mr. *Arnold* at some Distance before any of the rest did; I said to Mr. *Parsons*, Here is Mr. *Arnold* coming up the Lane; I will be hanged if he looks not a mind to shoot me. Mr. *Arnold* passed by my Lord with a short Look upon him; I was in the Road; then Mr. *Parsons* was on the right Side of my Lord, and I was in the Lane road with my Lord, behind him about four or five Yards. He passed my Lord *Oxley*, and comes up almost over-against me, rather beyond me; I see him look sternly on my Lord *Oxley* and on me; he had his Piece so as they commonly carry them when they shoot a-bird; He comes up with his Piece and shoots my Lord *Oxley* in his Shoulder: My Lord dropped by Degrees upon the Ground. I got off my Horse, and turn'd my Lord's Face from the Ground, for fear he should be scratched with the Duck, which was like Pounce or fire sand: So I turned him as soon as I could, and drew him to the Bank: I laid down, and my Lord laid down upon me upon my Shoulder. I did, Take care of the Villain, seize the Villain, he had killed my Lord: I went out to seize him, as well to secure him, as for fear the Villain should turn and shoot again.

Mr. *Justice Tracy*. You say you saw him coming down the Lane?
Mr. *Faulstich*. Yes, my Lord.
Mr. *Justice Tracy*. You say you followed my Lord *Oxley* in the Lane Track?
Mr. *Faulstich*. Yes, my Lord, I did.
Mr. *Justice Tracy*. How far was you from my Lord?
Mr. *Faulstich*. I believe I might be in the Lane Track, about four or five Yards from him.

Mr. *Justice Tracy*. Then you was after my Lord?—Mr. *Faulstich*. Yes, my Lord.
Mr. *Justice Tracy*. My Lord must be between you and the Prisoner, how came you to take Notice of him?
Mr. *Faulstich*. My Lord, this Prisoner did away with my Horse a Week or a fortnight before. I called at my Taylor's, and put my Horse at the Door, in the same Time I went in; and when I came to take my Horse again, my Horse was gone: So I run out in a Surprise, and seeing Nobody, a Man that was by told me, *Ned Arnold* had run away with your Horse. I coming out into the Street, could see into the Middle of the Town; where I saw my Horse thro' four Streets Throw off, and be walking him up the Town; I made haste—

Mr. *Justice Tracy*. I ask you, you say you saw him at a Distance, and you was behind my Lord?
Mr. *Faulstich*. Yes, I was so.
Mr. *Justice Tracy*. Then consequently my Lord was between you and the Prisoner.

Mr. *Faulstich*. Yes, the Way we came.
Mr. *Justice Tracy*. You say my Lord was between you and the Prisoner; how could you distinguish the Prisoner from my Lord?

Mr. *Faulstich*. Because he was in the Foot-way, and we were in the Horse-way.

Mr. *Justice Tracy*. He was in a different Track?
Mr. *Faulstich*. Yes, my Lord; he comes up the Foot-way and the Way we were in was the Horse-way.

Mr. *Justice Tracy*. As you was riding, could you perfectly distinguish the Man?—Mr. *Faulstich*. Yes, I could.

Mr. *Justice Tracy*. Yes, I could. Then you say, when he had passed by my Lord *Oxley* he turned back; what did he do at that Time?

Mr. *Faulstich*. He gives a Look upon my Lord; still kept on, and gave a Look, and went a little farther; then immediately turns round, and mounts his Gun; he had his Piece as usually Men have when they shoot a-bird; and before I could speak my Lord *Oxley* dropped.

Mr. *Justice Tracy*. When he mounted his Gun, did he take Aim or Level?
Mr. *Faulstich*. Yes, he made a Level as if he would shoot at his Head.

Mr. *Justice Tracy*. Which was nearer, you or my Lord?

Mr. *Faulstich*. I rather I was nearer my Lord than he was.

Mr. *Justice Tracy*. Prisoner, will you ask this Witness any Question?
Mr. *Justice Tracy*. I desire to ask this Witness one other Question. Had you any Discourse with the Prisoner afterwards?

Mr. *Faulstich*. Afterwards, Sir, what?

Mr. *Justice Tracy*. After, what he was in Custody for this Fact.

Mr. *Faulstich*. Yes, when I went to him in the *Martingale*, I did ask him, why he shot my Lord *Oxley*, and not me; because when he had run away with my Horse, when I met him afterwards, says I, Mr. *Arnold*, why did you do such a Thing as to take my Horse away? You don't know the Consequence of it; you are guilty of Felony. He said, I was a good Man; my Lord *Oxley* was not.

Mr. *Justice Tracy*. I desire to ask one Question. You say you were behind my Lord riding in the Lane Track, the same Way as my Lord was in; was that when the Prisoner passed by?

Mr. *Faulstich*. He was in the Foot-path, and turned back.

Mr. *Justice Tracy*. Did you then for him aim his Gun?

Mr. *Faulstich*. I did. I can't say I saw him till he was past; but he had his Gun as they commonly carry them when they shoot a-bird; and he presently mounted his Gun and fired.

Sir, for the Prisoner. We beg Leave to know from the Witness for the King, whether this Prisoner was in Diligence?

Mr. *Justice Tracy*. No.

Sir, I beg Leave to ask them one other Question; Whether these Gentlemen that give Evidence for the King, whether they don't believe the Prisoner to be a Lunatic?

Mr. *Justice Tracy*. Will you ask this Man any Question?

Prisoner. I have nothing to say any more; I don't know what more Questions to ask.

Mr. *Justice Tracy*. Mr. *Faulstich*, Whether did you take this Man to be a Lunatic?

Mr. *Faulstich*. Most People that lived at *Gayfield* have known him, that he was always a ferly, morose-temper'd Man: As to his being lunatick, I know nothing of that; I am not a Judge of that.

Mr. *Parsons* and Mr. *Parsons* said again.

Mr. *Justice Tracy*. How long have you known the Man?

Mr. *Parsons*. Twenty Years.

Mr. *Justice Tracy*. Do you take him to be a Madman, or no?

Mr. *Parsons*. No; I took him for a rascall, ill-natured Man.

Mr. *Sej. Chabryre*. What is his Behaviour?

Mr. *Parsons*. He is a fallen sort of a Man, a daggd Fellow.

Mr. *Sej. Whitaker*. How did he use to live?

Mr. *Parsons*. I don't know; he had a House.

Mr. *Sej. Whitaker*. How did he live?

Mr. *Parsons*. He used to go a-fishing and a-shooting.

Mr. *Sej. Whitaker*. Did ever any Body reclaim him from the Use of a Gun, as being a Madman?

Mr. *Parsons*. I never heard they did.

Prisoner. I have had my Gun go off several Times in my Hand; but never, till now, had this Accident.

Mr. *Sej. Chabryre*. He never before shot a Lord in the Shoulder. He can ask better Question when he holds up his Head; but if his Guilt makes him hold it down, I can't help it.

Mr. *Sej. Whitaker*. How long have you known him?

Mr. *Parsons*. I have known him several Years.

Mr. *Sej. Chabryre*. Do you remember, that in *August* last—and tell us when he came to your Shop? And for what Purpose?

Mr. *Smith*. Yes, I do know him.

Mr. *Sej. Whitaker*. How long have you known him?

Mr. *Smith*. I have known him several Years.

Mr. *Sej. Chabryre*. Do you remember, that in *August* last—and tell us when he came to your Shop? And for what Purpose?

Mr. *Smith*. Yes, I was ironing; my Daughter was at one End of the Table, my Face was next the Door, my Door stood open; and Mr. *Arnold* comes in, and said, Mrs. *Smith*, I want a quarter of a Pound of Powder, and a Pound of Shot; I told my Daughter to serve him; my Daughter serv'd him; and as it is usual to ask what Size, my Daughter asked him, What Size? Mr. *Arnold* said, For the biggest you have; and so my Daughter took the Key, and went to the Drawer where the Shot was; Mother, says she, there is none of the biggest Shot in the Drawer; says I, Some folk sort at them; and my Daughter serv'd the second Size; and when she had serv'd him, he took up the Quarter of a Pound of Powder, and the Shot, and laid down Five-pence, and said, There is your Money.

Mr. *Sej. Chabryre*. When was this?

Mr. *Smith*. The Day that my Lord *Oxley* was shot. I believe it was about an Hour after that, People came running up by my Door: I ask'd my Daughter the Meaning of that Noise! My Daughter said, My Lord *Oxley* is shot.

Mr. *Sej. Chabryre*. Had you sold him Shot before?

Mr. *Smith*. Yes; he was a pretty good Customer.

Mr. *Sej. Chabryre*. For how long?

Mr. *Smith*. I can't tell how many Winters; I believe, two or three Years.

Mr. *Sej. Chabryre*. Did you look upon him to be a Madman, and furnish him with Powder and Shot?

Mr. *Smith*. He used to ask for Half a Pound of Powder, and three Pounds of Shot, and had down a Shilling for it; which was the Price I sold it for.

Mr. *Sej. Chabryre*. Did you at any of these Times, for the Space of three Years you have furnish'd him, take him to be a Madman?

Mr. *Smith*. No.

Mr. *Sej. Chabryre*. Would you have done this if you had look'd upon him to be mad?

Mr. *Smith*. No; I look'd upon him as sensible as any Customer I had.

Mr. *Sej. Chabryre*. All that Time?—Mr. *Smith*. Yes, all that Time.

Mr. *Sej. Chabryre*. And the last Time?

Mr. *Smith*. Yes, the last Time.

Mr. *Sej. Chabryre*. At the Time when he came last, in what manner did he describe the Shot?

Mr. *Smith*. When he came to the Door, at first he ask'd for a Quarter of a Pound of Powder, and a Pound of Shot; And, as is usual, I ask'd him, What Size? And he said, The biggest Size.

Mr. *Sej. Chabryre*. Did he use to buy the biggest Size?

Mr. *Smith*. He never had any of the biggest Size before.

Mr. *Sej. Chabryre*. He never had any of that Size before; Did he ever use to come for a Pound of Shot? You say, He usually came for three Pounds.

Mr. *Smith*. He usually came for three Pounds.

Mr. *Sej. Chabryre*. When he paid for it, how did he pay for it?

Mr. *Smith*. He paid Five-pence in Half-pence.

Mr. *Sej. Chabryre*. Had he the Change ready?

Mr. *Smith*. It was ready changed.

Mr. *Sej. Chabryre*. Five-pence changed; Is that the common Price?

Mr. *Smith*. Yes, Three-pence the Powder, and Two-pence the Shot.

Mr. *Sej. Chabryre*. But that the Price of the biggest Sort?

Mr. *Smith*. Yes.

Mr. *Sej. Chabryre*. But he never had any of the biggest before?

Mr. *Smith*. No.

Mr. *Sej. Chabryre*. He says it was Robb'd Shot.

Mr. *Sej. Chabryre*. I believe it was, because he could get no bigger.

Mr. *Justice Tracy*. (To the Prisoner.) Will you ask that Witness any Question?

(The Prisoner made no Answer.)

Mr. *Justice Tracy*. Sir, since you have been here, it hath been desired you might be ask'd, Whether the Prisoner is a Madman: You have known him some Time before this.

Mr. *Parsons*. I never was in his Company.

Mr. *Sej. Chabryre*. But you have known him; You have known there was such a Person.—Mr. *Parsons*. Yes.

Mr. *Sej. Chabryre*. Did you ever see, or hear that he was reputed a Madman?

Acquaintance there, and his Place provided by him, equipped him with Coats, and sent him down: He came Back again. Nothing was to be got would give him, he seemed to like a Madman. When my Father did, he left him Five Pounds a Quarter. He would live under Barns, Hay-Ricks: He have caught him under my own Hay-Rick as a Morning, when he might have lain in his own Bed. He had a House in the Neighbourhood; but he had never a Stool, or a Pan, nor anything at all in it. I don't know whether he had a Chair, but there was no Bed. We could not persuade him off this: We would let him live Money.

Mr. Justice Tracy. He would live by himself.
Mr. Arnold. He lived by himself; and he hath known when Quarter-Day hath come, because People have danced for Money, this Philip the Taylor, Street the Alchemist-Keeper. And as soon as I come, and he had Notice, he would dart down the Hill to me, where I have been pursued by his Looks: Sometimes I gave him good Words, sometimes bad; sometimes I gave him a little Drink, sometimes none, for fear: He appeared as much like a Madman as ever any body did.

Mr. Serj. Copley. You are his Brother, and you would give him from hanging, it is natural, and I don't discommend you. You are upon your Oath, and Justice must be done. Sir, let me ask you, Whether you looked upon yourself to be a Madman in treating him in this Manner?

Mr. Arnold. No, I never did.
Mr. Serj. Copley. You say this Man had his Memory return very quick every Quarter-Day, as often as that came, he would come to you for his Money: Did you ever refuse it him, because he was mad, and not fit to be entreated with it?

Mr. Arnold. No, I never did.
Mr. Serj. Copley. At the several times he was put Apprentice, like an untoward Boy, he would run away; did you look on that as a Sign of Madness? When he was put to a Barber, did the Person you treated with, or you, look on him so to be a Madman?

Mr. Arnold. I did understand that he thought him disordered in his Brain.

Mr. Serj. Copley. As every untoward Boy is; when you sent a Letter to one Tordoff's wife, and not Person with him to take Care of him, would you, if you had thought him disordered, have sent him alone to provide for himself?

Mr. Arnold. We did not find him alone, but we sent him on Ship-board; I sent down to a Person to take Care of him when he came there; I did not think him so much a Madman as to be chained.

Mr. Serj. Copley. Would you take it to be proper, you that are his Brother, to send him on Ship-board into a Country he had never been in before, only on a Recommendation of a Letter, if you had thought him so mad as not to be able to provide for, and govern himself?

Mr. Arnold. I sent him to one that was my Customer.

Mr. Serj. Copley. Did you observe in those Letters that he was mad?

Mr. Arnold. No, I did not.

Mr. Serj. Copley. Then in these several Passages that he was too sharp for you, in that a Sign of a Madman? Are there your fair Reasons, because he acted like a naughty Man, that he was a Madman?

Mr. Serj. Fitzwater. If he was disordered, why did you not let him be confined?

Mr. Arnold. I did not think him so much a Madman as to confine him.

Mr. Serj. Fitzwater. I would ask you, on your own Knowledge, Can you give an Account of any thing that he hath done, but as a fallen or cruel Man?

Mr. Arnold. You don't look upon him so mad as to be chained?

Mr. Arnold. No, I did not.

Mr. Serj. Fitzwater. Did you put him under the Care of any Person?

Mr. Arnold. No, I did not; he lived at large.

Mr. Serj. Fitzwater. Did he ever let you with you?

Mr. Arnold. Yes, he did.

Mr. Serj. Fitzwater. How did he behave himself then?

Mr. Arnold. Very oddly.

Mr. Serj. Fitzwater. As how?

Mr. Arnold. As a Madman, I thought.

Mr. Serj. Copley. Whether or no did he use to carry a Gun?

Mr. Arnold. Yes, often in his Father's Time.

Mr. Serj. Copley. He used to use a Gun?

Mr. Arnold. He used a Gun in my Father's Time.

Mr. Justice Tracy. And hath he been in Court?

Mr. Arnold. Yes, several Times; and I have seen him with one several Times since.

Mr. Serj. Copley. Why did not you take it from him, as he was a Madman?

Mr. Arnold. He was my Brother, and I did not care to oppress him.

Mr. Serj. Copley. Now you would have prevented him from doing this Mischief, if you had done so. Did you ever farm any Land?

Mr. Arnold. I have.

Mr. Serj. Copley. Did you ever employ him?

Mr. Arnold. I have employed him in raking of Hay or Barley.

Mr. Serj. Copley. Did you find he brought it together, or scattered it about?

Mr. Arnold. He brought it together, but in such a manner, not right as a Workman ought to do.

Mr. Serj. Copley. Ay, he was a naughty untoward Boy from his Youth.

William Arnold swears.

The Prisoner at the Bar is my Brother, I believe him to be a Madman.

Mr. Serj. Copley. Give your Reasons.

Mr. Justice Tracy. What, is he a Lunatick?

Mr. Arnold. He is not perfect in his Senses; he did not know what he did at some certain Times: I can't say he was always so.

Mr. Serj. Copley. Go on, and give your Reasons.

Mr. Arnold. In my Father's Time I have heard him curse him, and call him wicked and abominable Names, without any Provocation; I have heard him talk to himself, sometimes catch at his Words, sometimes break out into Passions of Curious and Swearing, without any Provocation; After this I have observed him to burst out into a foolish Laughter,

and grin like any Madman: If you asked him what he talked of, sometimes he would give an Answer to, sometimes not. That I have at several Times, as in the parish of Tower, I cannot say for it; but this, as to the general, that I sometimes have observed him. Sometimes he would be very rational, and act like other Men.

Mr. Serj. Copley. Do you take that for the Sign of a Madman, to do a very wicked Thing?

Mr. Arnold. Madmen do very wicked Things.

Mr. Serj. Copley. Do you take him to be a Madman that would do wicked Things?

Mr. Arnold. Some do, some do not, for the sake of Profit and Gain.

Mr. Serj. Copley. Was you one that paid him any Share of this Allowance?

Mr. Arnold. I am ashamed. My Father left a small Money to my Brother and me, or just half Five Pounds a Quarter; and my Brother commonly put him. I have heard him tell his son that, and he said, the Prisoner would run in brain, and then he would damn him.

Mr. Serj. Copley. How do you like him?

Mr. Arnold. I do not like him better for this.

Mr. Serj. Copley. Then you know he is mad, but what your Brother told you?

Mr. Arnold. I know my Brother loved Money.

Mr. Serj. Copley. That I suppose is true.

Mr. Serj. Copley. Mr. Arnold, when you paid him his Quarter-Day, did he ever give you a Receipt?

Mr. Arnold. I always wait the Receipt, and he does not.

Mr. Serj. Copley. Did you not read it over to him, or let him read it?

Mr. Arnold. Yes, Sir.

Mr. Serj. Copley. As Quarter-Day he would be pretty well in his Senses?

Mr. Arnold. Yes, because he was named for his Money.

Mr. Serj. Copley. Did he not send you any Letters?

Mr. Arnold. Never in my Days, as I know of.

Mr. Justice Tracy. Can he write?

Mr. Justice Tracy. (To Mr. William Arnold) Did you ever write to him?

Mr. Arnold. I don't know; it is a great while ago if I did.

Mr. Serj. Copley. As to what you were speaking when he was a Scooter, did they take to put him in mind of his Passage?

Mr. Arnold. Those Persons he used to go to would damn him.

Mr. Serj. Copley. And when they did damn him, did you apprehend he knew what they meant by it?

Mr. Arnold. Yes, he might.

Mr. Serj. Copley. When he was told Quarter-Day was at hand, what would he do?

Mr. Arnold. I can't say, but he hath damned my Brother for Money.

Mr. Serj. Copley. When?

Mr. Arnold. When he hath wanted, and had not Money in his Pocket.

Mr. Serj. Copley. Did he never tell you that he had Dukes to pay?

Mr. Arnold. Yes, he hath.

Mr. Serj. Copley. What do you mean when you say, He was ferocious in his Senses, and sometimes not, Loss of his wits these latter, is?

Mr. Arnold. I can't say it.

Mr. Serj. Copley. Did you never observe some Men of Discretion act indelicately?

Mr. Arnold. Yes, very often; I may be sure it is my self.

Mr. Justice Tracy. How long ago is this?

Mr. Arnold. The Tenth of July last. I then asked him, why he was so concerned about my Lord Ogleby; for my Lord knew you I say he, I don't know that he hath: When did you see my Lord? Says he, I don't know; not this great while. Why are you so disturbed, then, about my Lord? Have you been shooting at my Lord's Manor? No, says I, I say he say; don't disturb yourself with these wild Notions; pray be easy. I then gave him some good Words, and I gave him something to eat, and made him promise to return home, and be easy; which if I would give him Money to return home, he would do, as he did promise me he would: And then was the last Time I saw him before this unhappy Accident of my Lord Ogleby's.

Mr. Serj. Copley. Did he give you any other Reason of his coming to Town?

Mr. Arnold. I don't remember he did. After some Reflection, and a very wild Look, he said, I am come to be free, I thank.

Mr. Serj. Copley. Give my Lord an Account, whether or no, when he was talking wildly against my Lord Ogleby, did he tell you who put him upon that?

Mr. Arnold. If you please, I have asked him these Questions: How come you to do this wicked Act? Did any body put you upon it? No, says he, I am sure you have done this wicked Act; and he said, my Lord Ogleby was my Provocation? Or any body for you to do it? Says he, My Lord Ogleby hath bewitched me, was always a Plague to me, and was the Plague of the whole Country; and several Things to the same Purpose.

Mr. Serj. Copley. You talk you gave him Money and Drink, I suppose you gave him both.

Mr. Arnold. I gave him Victuals and Drink, and Money in his Pocket, provided he returned home, which he promised me he would do.

Mr. Serj. Copley. If you looked upon him as a Madman, why would you give him Money, and be furnished with a Promise that he would return home?

Mr. Arnold. I never knew that he attempted to do any body Mischief.

Mr. Serj. Copley. How did you know but he might do you or himself a Mischief? Pray answer the Question, and be confident; you have said, you looked upon him as a Madman, and that he could not give

any

to reclaim him: He talked to him, but at last, he declared, he ought to be put into some Mad-House.

Mr. Serj. Chigden. When was this?
Mrs. Arnold. About five Years ago.
Mr. Serj. Whit. Was there any Discourse of applying to a Physician, or? You say a Minister made use of Means to reclaim him, I don't hear of any Physician consulted.

Mrs. Arnold. He never had any Physician, to my Knowledge.
Mr. Serj. Whit. Had he ever any Physician, or any Care taken of him, so if he was a Madman?

Mrs. Arnold. No.
Mr. Justice Tracy. He hath struck you?

Mrs. Arnold. No, not me, it was another Sister.
Mr. Serj. Darnall. Did you apprehend from any of these Circumstances, that he was like to do Mischief?

Mrs. Arnold. Sometimes I have been afraid of it: He would make a great Noise, and shut the Door, and keep us out.

Mr. Serj. Darnall. You have seen him take live Coals, and throw them into his Father's Fire?

Mrs. Arnold. I did.
Mr. Serj. Darnall. Was you not afraid he would have set the House on Fire? Had he not Sense enough to do that?

Mrs. Arnold. I believe he had done it, if he had not been prevented.

Mr. Serj. Darnall. You did not think him so mad, as that it was necessary to confine him.

Mrs. Arnold. I did, in my Conscience, think so.
Mr. Serj. Darnall. And you did not confine him?

Mrs. Arnold. It was not in my Power.
Mr. Serj. Whit. How long have you lived at Gainsford?

Mrs. Arnold. Three years at Gainsford.
Mr. Serj. Whit. You can't but have observed him then often out of Order?

Mrs. Arnold. Often so, by Fire.
Mr. Serj. Whit. One of your Brothers says, he used to be wife in Spring and Fall. Did you ever find for any Physician?

Mrs. Arnold. No.
Mr. Serj. Whit. He was so in Spring and Fall, a little bleeding would have done him good.

Mrs. Arnold. I don't know but it might.
Mr. Serj. Whit. Did you ever send to your Surgeon to bleed him?

Mrs. Arnold. No.
Mr. Serj. Darnall. Was it the opinion of the Family, that he should be sent abroad for a Soldier?

Mrs. Arnold. It was the Opinion of many of his Friends; but that is eleven Years ago.

Mr. Serj. Darnall. But he used to have his framed Trucks then?

Mr. Serj. Darnall. Yes.
Mr. Serj. Darnall. Whether did you look upon it, that sending him for a Soldier would reclaim him, or cure him of his Madnes?

Mrs. Arnold. Some were of Opinion it would.

Mr. Serj. Darnall. What! cure a Madman?

Mr. Serj. Whit. Pray, how long hath your Father been dead?

Mrs. Arnold. Five Years, last October.
Mr. Serj. Whit. How long before his Death was this firing the Coals on his Fire?

Mrs. Arnold. I don't know, but I believe it's more than seven Years ago.

Mr. Serj. Whit. Do you know any thing that should give him this Turn of Mind?

Mrs. Arnold. No.
Mr. Serj. Whit. Would you have lived at Gainsford, had it not been known and heard, that he went a shooting with a Gun?

Mrs. Arnold. Yes, frequently.

Mr. Serj. Whit. Did you ever caution any body against letting him have a Gun, or Ammunition?

Mrs. Arnold. No, I never did.

Mr. Serj. Whit. Was he under any body's Impediment, or Cure?

Mrs. Arnold. No.
Mr. Serj. Whit. Did he not kill Rabbits, and sell them?

Mrs. Arnold. I don't know.

Mr. Serj. Whit. Hath he not taken Fish, and sold them?

Mrs. Arnold. I don't know.

Mr. Serj. Whit. Did you ever apprehend any Danger from his using his Gun?

Mrs. Arnold. Sometimes we have.

Mr. Serj. Whit. How comes it you have not taken it from him?

Elizabeth Arnold sworn.

Mrs. Arnold. My Lord, I have lived with him some Years, and for more than seven Years I have observed him to be mad at some Times, though not so mad then as he hath been since: He was so very mad sometimes, that I was very apprehensive of being distressed by him, he would have Pibels and Guns, but I have taken them all away from him. Sometimes he would let off his Gun in the Kitchen, and give no Warning: A great many Times he would sit and talk to himself, and forever and what I have heard my body in their Seales do. About a Month before my Lord Ogle was shut, I observed, as I could by his Eyes tell when his Fit was coming, I observed him to look more wild than ever I saw him in my Life before. The twentieth of last August, he came into the Parish Church of St. Nicholas, stood in the Front of the Congregation, with his Face over his Breast, and his Hair in such a dismal manner, that I was several look at him, and they told me, when I came out of the Church, that my Brother look'd so frightful, that they would not meet him for ever so much. On the twenty-eighth of August I left my

Mr. Justice Aldon, and we said to him, if he did not think him distressed, he said, He is a great deal so, and he appears to be an Enemy to all Mankind, that he would give him no Account why he did this Action, but desired him several Times to shoot him through the Brains. As to myself, the Relation my Sister, Mary Arnold, hath given of it, is true, he had so Provocation from me; so far from that, I was afraid of him, and I said, Don't throw the Stick at me; but as soon as my Back was turn'd,

he took up the Stick, and threw it at me, and afterwards laugh'd at it.

Mr. Serj. Whit. Where did he live, when you was afraid of the Danger of his Pibels and Guns?

Mrs. Arnold. He lived in my Father's House at Katherine Hill, where I lived.

Mr. Serj. Whit. Then, I find, when you was in the Family, it seems you were afraid of his Guns and Pibels; how long have you lived at Gainsford?

Mrs. Arnold. More than three Years. I have left off House-keeping five Years.

Mr. Serj. Whit. Have you not known him have his Gun at his Command, and that he used to go frequently a shooting?

Mrs. Arnold. I did not know it of myself, but I believe he did: He had no Gun of his own, but he used to borrow one. When I left off House-keeping, I sold my Gun, and would not let him have one.

Mr. Serj. Whit. Why should you take so much Care when you lived together in the Family, and take no Care afterward?

Mrs. Arnold. I can give no Account of that; but my Father hath been advised several Times to put him into a Mad-House, but Mr. Ward had the Mind of the Parish; and Mr. Ward had advised his Father, in my Hearing, to put him into a Mad-House; for his said he was mad, and something else would do him good.

Mr. Serj. Whit. Do you know that Mr. Serj. Whit?

Mrs. Arnold. No; I don't know that ever I saw him in my Life before; I do not know him. When I first heard that he had taken this body, he was mad.

Mr. Serj. Whit. Do you know that Mr. Serj. Whit?

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Mr. Serj. Whit. Do you know that Mr. Serj. Whit?

Fright about the Prisoner; that I believed him much worse than ever I see him; and much feared he would do himself a Mischief.

Mr. Serj. Whitaker. What Answer did he make?

Mrs. Giffings. My Mother's Brother feared surprised.

Mr. Serj. Whitaker. Did not he say, Mind your own Business, you have nothing to do with it, or so that I forgot?

Mrs. Giffings. No, I know nothing of it that he said so. I have a great deal more to say, my Lord. My Mother and I coming from Church one Day, some time before he shot my Lord Ogilvie, and coming from Church, a Shower of Rain drove my Mother into the House of her Landlady; I was with her; The Landlady came, and my Mother asked where the Prisoner was? She said he was within: My Mother told her that she was very angry with him, and did not desire to see him; she was very angry that he should go away with Mr. Fowler's Horse. His Landlady told my Mother, He is certainly mad, and it was not to be minded what he said or did.

Mr. Serj. Chibbye. What you have heard goes for nothing.

Mrs. Giffings. I went to see the Prisoner in the Goal in Southwark the 23d of last Month, being the first time I ever saw him since he shot my Lord Ogilvie. I found him in great Disorder then, and I asked him how he came to do such a wicked thing? He gave me no Answer, or none that I could make any thing of. I asked him if any Body had bid him to do it? and he told me it was one *Sweeney* and *Thomas Farmer*; which I knew to be two little Boys: I wondered at his Answer. I asked him how he did, and told him the Time drew near for his Trial: He took no Notice of that; he said there was a great Plague in the World; and also that he knew not how it came; but repeated it, God take his Soul, if he knew any thing of the Plague come, or any thing about it: But abundance of times these Words were repeated.

Mr. Serj. Chibbye. What Words?

Mrs. Giffings. God take his Soul, if he knew how the Plague in the World come. I enquired what he meant by it? He told me the Wickedness of wicked People had occasioned it, and there would be great Mourning in all the World. I enquired what he thought would become of him if he was to be tried and condemned? He told me he should have a Fore-night's Time to go where he would, and do what he would: That every Body would be easy, and all would be at Peace. This was on *Saturday* last; and he repeated the Words, God take his Soul, if he knew any thing of the Plague in the World, or any thing about it.

Mary Martin swears.

Mr. Edward Arnold was in my House, which People said was mad: *Ned Arnold*, and *Ned Arnold*. People would give him that Report: so crazy *Ned Arnold*. *Ned Arnold* was in my House, and accordingly called for a Mug of Beer. And please you, I keep a Publick House. When I had fetched him a Mug of Beer, he sat himself down by the Fire; he fell a swearing and cursing, and swore that my Lord Ogilvie was in his Belly. Says I, *Ned*, what makes you swear, and curse my Lord Ogilvie for? It is *Pity, Ned*, but my Lord should know it, if he knew he was in your Belly, he would quickly come out of it. Says I, If you will leave, *Ned*, a Charon, you and I will go to him. Then we concluded what time to go, which was about eight or nine o'clock the next Morning, to go to my Lord Ogilvie's, and tell him he was in his Belly. Accordingly he got out of his Chair, and took a Knife, and swore he would carry that with him. I tell you nothing but what is true. So then comes in *Harry* —, *Harry's* Man that belongs to the Horse. He comes in with a Whop in his Hand. I said, *Harry*, will you go and fetch *Ned* and I to my Lord Ogilvie's, and tell my Lord that he is in *Ned's* Belly? Then several came in, several came to drink at my House: And this same Man fell a laughing heartily. I said, *Harry*, will you go? Yes, says he. But, says I, *Ned Arnold* talks of carrying a Knife. No, says he, if you carry a Knife, we may carry you there, but my Lord will take Care of us, and send us to the House of Correction. Ay, says I, and hang you too. He had been in my House twice before. I will leave nothing that I can remember.

Sally for the Prisoner. I desire the may be asked, whether he did not open his Bosom, and let her feel for my Lord Ogilvie?

Mrs. Martin. Some time before he came to our House, and sat scratching his Bosom, and feeling and looking down into his Bosom, cursing and swearing, and he told my Lord Ogilvie was in his Bosom, and had such a Influence over him, that he could neither eat, nor drink, nor sleep, or be at Ease for him.

Mr. Serj. Gwyn. You spoke of carrying a Knife, Did you ask him the Reason why he would carry the Knife?

Mrs. Martin. No, I did not.

Mr. Serj. Gwyn. Did you apprehend that he designed any Mischief?

Mrs. Martin. No, I had no Thoughts about it; I only talked in a joking Way. And it please you, my Lord, he was there looking in his Bosom. One time he comes, says he, There is *Sally Sweeney*, my Lord Ogilvie is got into *Sally Sweeney's* Belly. I did not know there was such a Gentlewoman. Says he, He is such a Plague to her, that she cannot eat, drink, or sleep. Says my Daughter, about eighteen or nineteen, one twenty Years old, Can't you sit? Because he had said he could not eat or drink. If I this, says he, it won't sink like another Man's Turd. My Lord, it is true. I think I have something more to say.

Sweeney swears.

I took him to be a crazy Set of a Fellow, not to be in his Senses at all Times. He would say he was plagued with the Buggs and Bollies, that he could not rest a Night; he was fain to flap his ears with the Ruggs, or he could not sleep. In the Morning sometimes he hath asked me whether I could rest? I told him, Very well. I asked him, How he rested? Says he, I am plagued with the Buggs and Bollies. He lodged at my House three Months.

Mr. Justice Tindal. How long ago is it since he lodged at your House?

Sweeney. He lived there till that Accident happened.

Mr. Serj. Whitaker. Did not you lend him a Gun?

Sweeney. Not at that Time: I did not to lend him a Gun in the Win-

ter, to *Roost Sparrows*, &c. but I did not lend him at that Time that this happened.

Mr. Serj. Whitaker. Why did not you take the Gun away from him?

This very Gun that he shot my Lord Ogilvie with, did not you lend him the Gun to go with?

Sweeney. I did not lend it him at that Time. I did say he might have the Gun to go with.

Mr. Serj. Whitaker. You gave him Leave to have this Gun; then I ask you, Would you lend a Madman your Gun?

Sweeney. I take him to be worse sometimes than others, as in *Spring* and *Fall*.

Mr. Serj. Whitaker. Did you take him to be fit to be at that Time?

Sweeney. He is more fit to be in the Water.

Sally for the Prisoner. My Lord, I desire he may be asked, Whether he did not hear him say any thing of my Lord Ogilvie; that my Lord Ogilvie had been there with his Wife? Or what he used to tell between this Man's Wife and my Lord Ogilvie?

Sweeney. He said, My Lord Ogilvie had brought a Hamper of Wine into the Kitchen, and put it on the Dresser over Night, and when he rose in the Morning, the Wine was drank out of the Hamper, and the empty Bottle were upon the Dresser. When I have come home, it is true, says he, my Lord hath been forgetting here, and my Lord keeps Company with your Wife, and your House is disturbed, they keep dancing above Stairs, that I can't rest. I have opened the Kitchen Door, to show him that it was not so; that there was no Hamper nor Boddies there.

Mr. Serj. Whitaker. Pray, give an Account when he had your Gun at first?

Sweeney. Sit, I can't do it.

Mr. Serj. Whitaker. Ask you, where your Gun was at that Time?

Sweeney. It was at my House.

Mr. Serj. Whitaker. What Gun had he when he shot my Lord Ogilvie?

Sweeney. It hath been reported that it was my Gun.

Mr. Serj. Whitaker. How came he by that Gun?

Sweeney. I will tell you how he might come to have the Gun: I was at Mr. *Ward's*, house of *Tarapots*, before this happened; says Mr. *Ward*, Can you catch my Coney? Says I, I believe I can do it better than I: Says he, I will give Sixpence a Coney to any Body for catching of them. When I came home, I happened to drop a Word about it; my Boy was by; says he, *Ned*, shall you and I go and catch Conies? Says he, I have never a Gun: Says he, You may take my Father's Gun; and, says the Boy, We will go Halven.

Mr. Serj. Whitaker. Then you left the Gun, as he might take it?

Sweeney. I did not lock it up.

Mr. Serj. Whitaker. How came you to let a Gun be in the Way, as he might come to it, if you apprehended him to be a Madman?

Sweeney. In former Times he did carry a Gun, and he came of a good Family: I thought I might let him have a Gun, when I see him in his Senses.

Mr. Serj. Gwyn. You say this Difficultie about giving Sixpence to kill Conies, gave occasion that he had your Gun? — Sweeney. Yes, Sir.

Mr. Serj. Gwyn. Did he hear you speak it, that such a one would give Sixpence, &c.

Sweeney. Not to my Knowledge; but my Boy took it up, and told him his next Day.

Mr. Serj. Chibbye. Pray, This Story you tell us about a Hamper of Wine, when was it?

Sweeney. A pretty while before this happened.

Mr. Serj. Chibbye. What do you call a pretty while?

Sweeney. I believe it might be half a Year.

Mr. Serj. Chibbye. Did not he use to have the Key of your House to go in and out as he pleased?

Sweeney. We had two Keys; he had a Key, but we could bolt the Door, and keep him out of the Kitchen: I was afraid he would fire the House.

Mr. Serj. Chibbye. He might come in and out when he would?

Sweeney. We did not trust him with that Liberty to go into the Kitchen.

Mr. Serj. Dwyer. Did you trust a Man in your House, that you was afraid would fire it?

Sweeney. He could not come to that Place where the Fire was.

Mr. Serj. Dwyer. You was often frightened lest such a Thing should happen?

Sweeney. I was going to tell him out: I told my Wife, This Fellow is so mad, that we can't keep him any longer; he is fit to go to *Bolton*.

Mr. Serj. Gwyn. Did you hear him speak of my Lord Ogilvie?

Sweeney. He hath been saying some Time. When my Boy was alone with him, he asked my Boy for my Hog-Knife; the Boy shod him, what he would do with it? And he said, He would kill himself.

Mr. Serj. Gwyn. Did you hear this?

Sweeney. I did not hear him say it, but my Boy told me when I came home.

Mr. Serj. Gwyn. Did you ever hear him speak by way of threatening my Lord Ogilvie?

Sweeney. Sometimes he would halloo as an Owl doth; sometimes he would fly Cuckoo.

Mr. Serj. Gwyn. Have you ever heard him threaten my Lord Ogilvie?

Sweeney. I have heard him curse and damn my Lord Ogilvie.

Mr. Serj. Gwyn. Have you ever heard him threaten him?

Sweeney. One Time, about a Twelve-month ago, he said he would shoot my Lord Ogilvie at the Horse-Race, and looked very wild.

Mr. Serj. What Horse-Race? Goodford Horse-Race?

Sweeney. I took it to be so.

Mr. Serj. Did he say he would shoot him at the next Horse-Race?

Or he would have shot him at the former Horse-Race?

Sweeney. I took no further Notice of it, for I took him to be a crazy Fellow.

Mr. Serj. But what did he say?

Sweeney. He said he would shoot my Lord Ogilvie at the Horse-Race.

Mr.

Mr. *Morph*. When was this? Before the Horse-Race?
Sweeney. It was in May was Twelvemonth; I have was one Horse-Race pulled; I never heard he did mention it.
 Mr. *Morph*. You say this was May was Twelvemonth; How often had he had the Use of your Gun since?
Sweeney. I don't know how often, because I did not mind; He never did so harm.

Mr. *Morph*. Hath he had it several Times?
Sweeney. He hath had it several Times.
 Mr. *Serj. Whitaker*. Had he not the Gun whenever he would?
Sweeney. No; I used to carry it to *Whedridge*, to shoot Sparrows.
 Mr. *Morph*. Did not you bring the Gun Home again?—*Sweeney*. Yes, *Sweeney* for the *Professor*. My Lord, as to the Time of his taking the Gun, to go to shoot Mr. *Wain's* Conies, Whether it was not the same Morning that my Lord *Oxley* was first?
 Mr. *Justice Tracy*. He tells you he was not at Home.
 Mr. *Justice Tracy*. According to his Information, whether it was not at that Time?
 Mr. *Justice Tracy*. He said he did not load him his Gun then, but he had it then.

Mr. *Justice Tracy*. Whether the Lane, in which this Fact was committed, doth not lead to Mr. *Wain's* Turnip-field, where the Conies were?
Sweeney. It lays the same Way, and my Wife thought he went, because my Wife for him, and had lent him Money to buy the Shot to shoot the Conies with.

John Dedman sworn.

Mr. *Justice Tracy*. What do you know of this Man?
Dedman. I know him to be a Madman.
 Mr. *Justice Tracy*. Why?
Dedman. By reason my Lord *Oxley* was always in his Mind; he was always troubled with my Lord *Oxley*; he could never take no Ball, the Devils and Buggs troubled him so. In the next Place, he rented a House, he had neither Good, nor Beds, nor Chairs, either to lie down upon; he had nothing to be down upon. He would come to the House, and he would beat himself out of the House; I have been called from my Work, to make Peace among them.

Mr. *Justice Tracy*. What House? To whom was this?
Dedman. To his Friends, and to his Sisters.
 Mr. *Justice Tracy*. How long ago is this?
Dedman. About five or six Years ago.

Richard Wheatley sworn.

Mr. *Justice Tracy*. How often have you seen him, and he hath come into the Shop sometimes to that I have been afraid to have him; Sometimes he would come in, and go out again, and hath spoken never a Word.
 Mr. *Justice Tracy*. Why have you been afraid?

Mr. *Justice Tracy*. Because he hath fustled all the Time I have been showing him. *Sweeney* for the *Professor*. My Lord, I desire he may be asked, Whether he did not wish to desire him to cut his Throat?
 Mr. *Justice Tracy*. One Time, as I was having of him, he said, Damme, cut my Throat.

Mr. *Serj. Glynne*. I suppose, at that Time, you had given him a Nick; Jack you, What he said, Cut my Throat? Or, You will cut my Throat?
 Mr. *Justice Tracy*. He said, Damme you cut my Throat.

Mr. *Serj. Whitaker*. What Answer did you make?
Witness. None; I was afraid.
 Mr. *Serj. Whitaker*. Did you take every Man for a Madman, that swore when you cut him?

Tyler sworn.

Mr. *Justice Tracy*. I have known Edward Arnold for several Years; and I never knew but that he was a crazy Sort of a Man.

Mr. *Serj. Whitaker*. What do you mean by a crazy Man?
 Mr. *Justice Tracy*. He had several foolish Expressions.

Mr. *Serj. Whitaker*. Did you take him to be a distracted Man?
 Mr. *Justice Tracy*. I could not take him to be otherwise.

Sweeney for the *Professor*. My Lord, I desire he may be asked, Whether he heard him express himself about the Buggs, and Ballers? Or, Whether he proposed to take his Gun, and shoot himself?

Mr. *Justice Tracy*. Did you hear him talk about the Buggs?
 Mr. *Justice Tracy*. I heard him say, that the Ballers, and the Plagues plagued him so, that he could not take his Rest at Night.

Mr. *Justice Tracy*. Whether he desired that he might take his Gun, and shoot himself?
 Mr. *Justice Tracy*. I have seen him several Times.

Mr. *Justice Tracy*. Did he say he would take his Gun, and shoot himself?
 Mr. *Justice Tracy*. I can't say that; I don't know it, I never heard of it; I have heard him sit, and rail, and swear, and dance to himself.

Mr. *Justice Tracy*. I desire he may be asked, if he hath ever heard him say any Thing about any Transgression with my Lord *Oxley* and this *Sweeney's* Wife?

Mr. *Justice Tracy*. I have heard him say, that my Lord *Oxley* was there one Night there, at *Sweeney's* House, and he drank out a Hammer of Wine there; and they had Puddles, and danced; and he said, one *Sweeney* played to them; And when he came down in the Morning, there was the empty Bottles upon the Table.

Thomas Poulter sworn.

Mr. *Justice Tracy*. I ever took the Man to be not as another Man; he was always out of his Mind.

Mr. *Serj. Whitaker*. How long have you known him?
 Mr. *Justice Tracy*. I have known him these Nine Years. One Time he came in a Pailson where I was, and said he would kill me.

Mr. *Serj. Whitaker*. What was the Reason?
 Mr. *Justice Tracy*. I know some at all; but a pailson over, and he never did me any harm, or any Wrong. About a Fortnight before this was done, I was working in the Field, and he came to me, and looked much melancholy; he wore and cursed, and he said at last, Damme Tem *Oxley*; and I asked, how my Lord *Oxley* had hurt him? He said, he had bewitched him four or five Years ago, and he had had nothing else through him ever since, and he should never be able to go up *Ady Hill*. This was about a Fortnight before this Accident happened.

Mr. *Serj. Whitaker*. Where do you live?—*Witness*. At *Godalming*.
 Mr. *Serj. Whitaker*. Did you give any of his Relations Notice of this?
Witness. A great many People knew of this; He said, he wished he could see him to scratch him to each blood of him, because he had bewitched him, and he would go to the King, and know the Reason, why my Lord *Oxley* plagued him so.

Mary Martin sworn.

Mr. *Justice Tracy*. I have known him almost these Five Years; I always thought him mad, by his mad Actions, as I have seen him; he hath often come into his Sister's House, and hath sat himself down, and hath talked to himself, and hath sworn, and cursed, and talked of the Plague, and would look one Way and another, and talked to himself; He would sit to his floor together, and then he hath got up, and gone away, when his Sister hath not been at Home. On the Saturday before he shot my Lord *Oxley*, he came and asked for some Small Beer; my Mistress was not at Home; I fetched him some, he sat himself down, grinned his Teeth, and had such Actions; looked one Way and another, and without any Provocation cursed and swore, and talked of Plagues; I was so frightened, I called my Fellow-Servant into the Room; I was afraid to stay with him.

Mr. *Justice Tracy*. Did he show any Marks of Rage?

Mr. *Justice Tracy*. Yes, my Lord.

Mr. *Justice Tracy*. What did he do, besides grinning his Teeth?

Mr. *Justice Tracy*. He did not say much; he looked about, and talked to himself.

Mr. *Justice Tracy*. How did he talk?

Mr. *Justice Tracy*. He talked to himself.

Mr. *Justice Tracy*. How?

Mr. *Justice Tracy*. Oh! very wildly, with his Eyes looking one Way and another, Mr. *Serj. Glynne*. Was he cursing at any body in particular?
Witness. Not as I know. I did not hear him mention any body's Name.
 Mr. *Serj. Glynne*. My Lord, I desire this Witness may be asked, What Transgression did he see in the Man, and what Directions he received from the Keeper, in the House of Correction?

Mr. *Justice Tracy*. I carried him Victuals every Day, while he was there; He said very little to me, but behaved himself much as he used to do. The Gaol-Keeper, Mr. *Fisher*, and *John Patten* told me, that my Mistress should not carry him Victuals with Flowers, nor they would not let him have a Knife, they were afraid he would make away with himself; they brought the Meat off from the Bords, before they gave it him; The good Woman of the House where he lodged, and the Boy went with me to see him; says he, Yes, how do you do? Do the Plagues and Bibles plague your Soul as they used to do when I was there? And the Boy laughed at it.

Stephen Patten sworn.

Mr. *Justice Tracy*. My Lord, I desire he may be asked, Whether he hath not found him mad in a Lodge all Night as the Air?

Mr. *Justice Tracy*. My Lord, I found him in *Loggy-Lodge*, and there he was when I went to work upon a Place, where there is some best wood Timber.

Mr. *Justice Tracy*. When did you find him there?

Mr. *Justice Tracy*. I can't remember the Time.

Mr. *Justice Tracy*. Was it Night or Day?

Mr. *Justice Tracy*. It was in the Morning.

Mr. *Justice Tracy*. Had he been there all Night?

Mr. *Justice Tracy*. As far as I know, he had.

Mr. *Serj. Glynne*. How long ago is this?

Mr. *Justice Tracy*. About two Years ago.

Mr. *Serj. Glynne*. What Time was it?

Mr. *Justice Tracy*. It was in the Morning about seven o'Clock; we went to mend the Tiling of the Lodge; I can't tell the Time of the Year it was.

Mr. *Serj. Glynne*. About what Work were you about?

Mr. *Justice Tracy*. Mending the Tiling of the Lodge. It was the Spring of the Year.

Mr. *Serj. Glynne*. About Lady-Day?

Mr. *Justice Tracy*. It was then about.

Mr. *Serj. Glynne*. Did you ask whether he had been there all Night?

Mr. *Justice Tracy*. No; I did not find him at first, but he popped his Head out; When I found that, I looked up, and heard a Man cry, Don't meddle with my Tobacco; I was surprised at it.

Mr. *Serj. Glynne*. Who brought you here?—*Witness*. I was brought by Mr. *Serj. Glynne*. Who brought you here?—*Witness*. Mr. *Arnold*.

Mr. *Serj. Glynne*. Which of them was it?

Mr. *Justice Tracy*. I don't know both; Mr. *Arnold*, of *Katherine's* Hall.

Mr. *Serj. Glynne*. Had you any Private of any Money, or any Thing else, if you could swear him a Madman?—*Witness*. No, my Lord.

Mr. *Serj. Glynne*. Were you not told, it should be worth Thirty or Forty Shillings to you, if you could prove him a Madman?

Mr. *Justice Tracy*. I had nothing presented me.

Mr. *Serj. Glynne*. I tell you, Whether they said, It should be worth to you?—*Witness*. No.

Mr. *Serj. Glynne*. Did Nobody say to you?—*Witness*. No.

Mr. *Serj. Glynne*. Have you not declared that this *Arnold* was a Rogue, and no Madman?

Mr. *Justice Tracy*. I believe he is a Lunatick Man.

Mr. *Serj. Whitaker*. I ask you, Whether you have ever declared that you believed him a Rogue, and no Madman?

Mr. *Justice Tracy*. I believe always took him to be a Madman.

Mr. *Serj. Dorell*. Did you never say to any body, that it was your Opinion, that he was not mad, but a Rogue?

Mr. *Justice Tracy*. I never said any such Thing in my Days; No, indeed, I did not.

Mr. *Serj. Whitaker*. Did you not say to some *Sweeney's*?—*Witness*. No.

Mr. *Serj. Whitaker*. Had you no Discourse about it?

Mr. *Justice Tracy*. No, no.

Robert Dorell sworn.

Mr. *Justice Tracy*. My Lord, I have known him a great many Years; I lived near his Father; I never thought him any Thing but a crazy Man, seldom

Mr. Justice Tracy. His Father hath sent for me several Times, to desire him make good: for he would be ready to beat his Sisters and his Father out of Doors: I told him, if he would not be still, I would send him for a Soldier: Then when before a Justice of Peace, to frighten him, but he was as bad when he came home again.

Mr. Justice Tracy. Did you hear him threaten to turn his Father and Sisters out of Doors?

Dorothy. I did not hear him: He abused his Father, and I had him before a Justice of Peace; I was Confused.

Mr. Serj. Copley. Did you take this to be a Carriage to a Madman, or to a wicked Man, to seduce him?

Dorothy. I did not take him to be in his Senses.

Mr. Serj. Copley. Why did you carry him before a Justice? Was he not a wicked Rogue, an unsworn Boy? Was not the Reason why his Father sent him for a Soldier? Do you like to send Madmen or Soldiers?

Soll. for the Prisoner. This is the Wife of ——— Swetman.

Mr. Justice Tracy. What name you to lay? What is your Opinion of the Prisoner?

Swetman. I really think he is a Madman, and not in his right Senses.

Mr. Justice Tracy. He lodged at your House?

Swetman. He lodged at my House.

Mr. Justice Tracy. When? About this Time that this Accident happened?

Swetman. Yes, my Lord: Though when he came to my House, I took him to be a pretty sensible Man. After a little Time, he grew very mad; and one Sunday Morning he got up, and walked out with my Son up the Apple-Tree, and when he was upon the Hill, he said to my Son, *Jo*, I want to come to your House.

Mr. Serj. Copley. Was you there? ——— Swetman. My Son told me *Jo*.

Mr. Serj. Copley. That won't do.

Swetman. He said he would not come to my House any more: It rained that Night, but he did come, and went to Bed. The next Day he went a walking, but I don't know where: At Night he came home; I heard him come home: About Nine, I desired him to come in, and go to Bed, because my Husband was not at home: He said, He came in, he would not come in, I had got Regrets bid in the House; and I said, No, *Mr. Arnold*, or *Edward*, or *Ned*, I can't tell which; he heaped over the way with such a Fury, and said, He would not come in to-night, I thought he should not come in to frighten me, I locked the outside Door: He said a Key, for I had it, and I behind the outside Door, that when he got in at the outside Door, he should come no further. At Two o'Clock in the Morning he comes to the Door, and fat there till the Clock went: Then, when he came in, I finding him there, got up, and opened the middle Door, he went to Bed, said nothing to me, or to him, but looked out of Humour, in a wild, staring, distracted way: A little while after, my Husband came home, and as he sat by the Fire, he came to him; *Stephen*, says he, you are a punk-timed Man, but you have a bad Woman for your Wife, and he made me out as if I was naughty to my Husband; says he, She hath fack Racketings and foolish Doings here; he hath had Men above Stairs, fed them with Victuals, and I could not rest for them. He said, He came down one Morning, and he lay a Hammer and Head of Wire hanging upon the Clock, so my Lord *Copley* said I had drunk out, and he had been there forgetting, and I was in a Passion, and my Husband said, I was to blame to take Notice of him, for we took him for a Madman.

Sometimes I have desired him to read a Chapter in the Bible, when my Husband hath been abroad, to pass away the Time, till my Husband hath come home, which he did feebly, I desired him to read another, he did it very feebly. Another Time, as he was sitting down on the Couch, by the Fire-Side, I for him look very wild, and I came to him, and said, Come take the Bible, and read, and put all these abominable, wicked, distracted Things out of your Mind; he gave me no Answer, but took the Bible out of my Hand, and looked in it, and frown and railed, and said foul Things as I am sure could not be in the Bible, and he looked very wild and very mad.

Mr. Serj. Copley. How long was this before this Accident happened?

Swetman. I can't tell how long, it was within the Time he was at my House.

Soll. for the Prisoner. Please to ask her about the Rugs at her House.

Mr. Justice Tracy. What do you say relating to a Rug?

Swetman. One Morning, in a raging Condition, I heard him swear, that he had pulled my Rugs to pieces, and had stopped his Ears with it.

When he came down Stairs, he came raving, and pulling the Staff out of his Ears, and raving at the Bullies and Bolshaws, and I know not what, and said, The Bullies plagued him, and he thought my Lord *Copley* plagued him.

Soll. for the Prisoner. My Lord, I humbly beg the Favour, that the may be asked, relating to the Transgression that Morning, when this unhappy Accident happened, that the would give your Lordship an Account, if you please to ask her, whether she lay at home that Night, and what passed between her and her Son, relating to *Mr. Arnold's* Cones? And whether she did use words, that *Mr. Arnold* would give Satisfaction for every Cony she caught, because they eat his Turnips?

Mr. Justice Tracy. You would have me to ask these Questions? Did he lay at home that Night?

Swetman. My Lord, he did not lay at home that Night; I never heard nor he him till about Six o'Clock; he took a Basket of mine, and went to *Goodfellow*, and bought a Lamb; in the mean Time, I got up, and he, to the bell of my Knowledge, asked me, Whether I had seen or heard any thing of the Fox-Hounds? and I said, No, don't trouble me, I have something else to mind: That was in the Morning, after he came from *Goodfellow*.

Soll. D. Did you hear him say any thing about *Arnold's* Cones?

Swetman. Yes, after he came home, he asked me if I had heard or seen any thing of the Fox-Hounds; and he looked ill-will and indifferent. He went out of Doors, and came in again; sat down, and got up again,

and was very untoward. My little Boy came in, and asked him, Whether he would go and shoot *Mr. Arnold's* Cones? But my Boy said *Mr. Arnold* should shoot them, and he would bring them to him; and *Mr. Arnold* said, he had no Powder nor Shot, nor Money to buy any. And my Child said, I will go with you, and ask my Mother. So *Mr. Arnold* asked me to lend him a Shilling; and I did lend him a 3d. thing's worth of Halfpence; and my Child wanted to go with him to *Goodfellow* to buy this Powder and Shot: I said, he should not go, but he should go to School; and *Mr. Arnold* was to go to *Goodfellow* and back again.

Soll. Did he borrow it to buy Powder and Shot?

Swetman. He borrowed it to buy Powder and Shot, to shoot the Cones, so far as I know.

Soll. Did he give that as a Reason?

Swetman. Yes, my Child was to go with him; and he was employed that he way to go with him to the Cones.

Mr. Justice Tracy. Then he went away, and came home again?

Swetman. Yes.

Mr. Justice Tracy. How far do you live from *Goodfellow*?

Swetman. About half a Mile. After he had got Powder and Shot, I see the Gun flashing in our Corner in the Kitchen. At last I thought he had not a Mind to go and shoot the Cones. He was gone out of the Door; a Man and a Woman came and desired me to stand at my Door, there was a Horse and a Hammer coming by; I said to buy Fifth of them as they went by. I desired *Mr. Arnold* to stand at the Door, while I went up to dress. I took it he would stand at the Door while this Horse and Hammer went by. To the bell of my Knowledge, he said he would. I went up, *Arnold* came, and said, Are you coming down? I said, No. But I said, If you want to go, you may go. I thought him a truly Scurd. So he went away. I looked to see which way he went. He went up the Lane towards *Mr. Arnold's* Turnep-field. Then I went away to dress my Head. I was not far gone, but I heard the Gun go off. I think it, this Man hath lost something in the Lane. When I looked, I saw some Gentlemen, and some Horse, and Nobody upon them. Then I thought he might have frightened the Horse, that they had thrown the Gentlemen. Immediately one came to me, and said, Dame, bring a Chair; Which I did. And I saw a Gentleman was foot: He was wounded and bloody. Somebody said, Here you got some good Brandy, or fair Water? I went and fetched both. When I came again, I did not know that this was my Lord *Copley*.

Mr. Serj. Copley. Had you heard him say any thing that Day, or before, threatening my Lord *Copley*?

Swetman. Yes; I have heard him say, he would kill my Lord *Copley*.

Soll. for the Prisoner. And Nobody else?

Swetman. He hath said he would kill me, and he hath threatened to kill *Swetman*; and he hath threatened to kill my Child; for you are plagued, and I am plagued, and your Child is bewitched, he said.

Mr. Serj. Where did this Gun stand?

Swetman. It stood sometimes in one Place, and sometimes in another.

Soll. for the Prisoner. I beg leave to examine a Witness or two, to confirm this Witness's Evidence.

Mr. Justice Tracy. Did you hear what this Witness said?

Edward Arnold. Yes, he related the same thing to me.

Mr. Justice Tracy. How long ago?

Edward Arnold. About a Fortnight ago.

Mr. Arnold. And the gave us the same Account.

Mr. Copley says.

My Lord, I was with him on the *Marble*. I asked him, What could induce him to murder my Lord *Copley*? He made me little Answer as full; but at last he said, My Lord *Copley* had bewitched him, and if he had any Money in his Pocket, he could not spend it in any Quest; my Lord *Copley* troubled him, and run in his Head, that he was never easy, nor never quiet. I asked him, Whether any body had got him upon this *Adieu*. And he believed pretty much of it, and afterwards he said, No, nobody had put him upon it. I went afterwards once more to him on the *Marble*, and I asked him again, Whether any body had got him upon this barbarous *Adieu*? And he said, That my Lord *Copley* (the People had said) was the Occasion of all the Troubles in the Nation, he said, that he could not have any Peace nor Quiet in himself in his own Mind; and he was in a great deal of Confusion. I could not tell what to make of it, that I could not but judge he was besides himself, and I thought.

Mr. Darby says.

My Lord, by Command of my Lord *Copley*, I several Times called this Man to Examination.

Mr. Serj. Copley. My Lord, I submit it to your Lordship, Whether this Evidence ought to be permitted in this Case, as to this Man's Behaviour subsequent to the Fact, the Evidence antecedent to the Fact is very proper, but the subsequent, it is very likely, may be unaccountable.

Mr. Justice Tracy. It must be submitted in the Jury, as it appears to them, both before and after.

Mr. Darby. My Lord, by Command from my Lord *Copley*, I called this Prisoner several Times, to examine him, so far as I could find the true Cause why he did this Action. I have been with him by myself, with his Friends and his Brothers, but I could never get any tolerable Answer. He said, my Lord *Copley* had bewitched him, and was a trouble to him.

Soll. for the Prisoner. We have ———

Mr. Justice Tracy. You have had an Indulgence, the greatest that ever was given before, but I would not stop you.

Soll. My Lord, I humbly submit it.

Mr. Serj. Copley. Will your Lordship please to favour me, by way of Reply, to take Notice of something?

Mr. Justice Tracy. You hinted something, I think, by a Question. You had one of the Witnesses asked, Whether this Man was a *Delusé*?

Do you believe there is any thing in that? If you assure me that *Mr. Hangerford* tells you there is any thing in that Matter, I will bear him.

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Mr.

My Lord, we shall show full this Man's Examination, notwithstanding he was afterwards fallen; and as he expresses it, What doth my Lord find his Fools after me?

What is put down in Writing is what we shall say before your Lordship, falsified by his own Mouth: Notwithstanding they would have said that he is entirely deprived of Reason, your Lordship will find some Letters written by himself, taking Notice of the Difficulties he was under, that the People took his Clauses from him; it was easier for him to die, rather than live in such unhappy Circumstances; and desires to be brought to his Trial: This was during his Confinement, and is very proper for your Consideration, and for these People to come to swear he is a Madman, and the Man to look for too, is very surprising. We will say this Master before you, together with a Witness or two, and shall submit the whole to your Lordship's Direction.

Mr. Serj. Whistler. My Lord, I beg one Word by way of Reply. They have given some Account of his Behaviour since his Confinement. Grazebrook, I cannot but take Notice of his Behaviour at the Bar, when this Man hath been spoke to, whether he hath not behaved himself as a Man of Sense would do that had done an Injury; and when he was asked what he had to say, whether he did not give a rational and sensible Answer? As I take it, he had he was sorry for the ill Act he had done.

What can the most rational Man, if he hath been in an ill Act, say, after he hath done it, but he is sorry for it? I believe every Man that has done an ill Act, and is sorry for it, is a rational Man.

Then, my Lord, they give an Account how he behaved himself after this Fact; and there hath nothing been proved of any Remorse but a full Behaviour. When Mr. Aile was with him, his Behaviour was full; that agrees with all Accounts that have been given. Then we shall call one Witness, who will give you an Account of his Behaviour in the Marshalsea, which is introductory to two or three Papers, which we shall give in Evidence: What said my Lord to find his Fools after me, &c. For a Man to do this, and then to say he is of his Sense!

As to what Mr. Dearly says, that the Man was always fallen when he came to talk with him; if this be a Proof of his Insanity, it is rather a Proof that he understood himself very well, and had his Senses: There is no Reason to say that this Man was a Madman, and the Law will excuse him from being a Criminal. Thus as I shall trouble your Lordship with: We will call our Witnesses, and then submit it to your Lordship's Direction.

Mr. Serj. Gaynes. If your Lordship please to indulge me a very short Word relating to the Contradiction of this Act of Parliament; there is no Foundation of any Doubt on the Contradiction of this Act, and the Intention and Design of it.

Mr. Justice Trow. Another thing more material; It was adjudged to be the King's Bench, and to entirely given up; that there was not the least Doubt.

Mr. Serj. Gaynes. My Lord, therefore the thing to be considered in the Evidence is, Whether it is a Proof of any Offence within the Words of this Act of Parliament? If this unhappy Attempt had went so far as the Noble Lord had died, I believe it is hardly to be imagined that any Evidence given here would have been thought sufficient Ground to have excused the Person guilty from the Punishment of the Law.

Thus in case (as now) he recovers of those Wounds, that create a Sort of Tenderness and Compassion, where the Consequence is not altogether so dismal; and that may suppose the Person to be regarded with more Tenderness than in another Case: But the Case is the same in one as in the other Case; and therefore he that doth the Act willfully and maliciously, &c. is guilty within this Act of Parliament. If a Person have no Mind, he can be capable of no malicious Design: Therefore we humbly submit that must be the Evidence to excuse the Person, That he had no Malice or Design in the Attempt made on this Noble Lord: But if upon the Evidence it appears, that he acted with Design, with Deliberation, with Sedulity, and a long, fixed, and settled Malice, and that in Evidence of Insanity that can show he had no Malice to excuse him; then he is guilty within this Act.

Mr. Serj. Dervick. My Lord, I am very unwilling to take up any more of your Lordship's Time: I apprehend, the Insanity of the Man must be reckoned at the Time he doth the Fact; if he hath Intervals, and kills a Man in those Intervals, he is as much subject to the Law as any other Man; therefore taking it all to be true, that the Man is sometimes out of his Senses, it will then fall under this Consideration, Whether at the Time that he did this Fact, it was not in his Intervals? And if so, he must suffer the Law. My Lord, the Evidence hath made it manifest, that he was in a Capacity of doing that Morning, employed by his Shot, employed to do a Work to get Money; he doth say, Sir, I shall submit the Sort of Shot, a bigger Sort than ordinary. In the Morning of that Day, the People thought him capable to be entrusted with Money, and to be employed, &c. from the People that then employed and entrusted him, looked upon him that Day to be in his right Understanding: Taking that for granted, if at that Time he was really in his Senses, he is subject to the Law. My Lord, it is very odd to hear so many Relations come into Court, and confess themselves guilty of the wickedest Practice; they say, they apprehended he would let the House on Fire, do Mischief, and yet suffered him to go abroad. Some say, they did not fear him, but they looked upon him as a Madman, therefore not to secure him, it is Matter of Confusion to all those Relations, to look upon him to be mad, and yet take no Care to confine him, or to cure him. I don't find one single Instance to shew him with any Care for a Cure; therefore we hope, on the Representation of the Relations, this Man is not such a Person as to be excused from the Law. I think it is very much to be weighed in the Breast of the Jury, whether this Man is not a Warning to every wicked Person, and a Caution to Relations, that they should have Regard to such a Person.

It is a very sorry Account to be given, when a near Relation is under these Circumstances, to say, It is our Relation hath done it, pray don't condemn him, though we have let him go abroad in the World, though we knew he was out of his Senses: This strikes deep in their own Conscience, whatever be the Event of this Trial. But I think there is sufficient

Proof, that this Man should be brought in in the same Manner as every Body else is, that is in his Sense.

Mr. Marsh. This Trial hath held too long for me to add any thing to take up more of your Lordship's Time; I only beg Leave to take Notice, that I think it is very extraordinary in these Relations, that they should not take Care, when they apprehended him to be mad, to secure him; I don't apprehend that he was at a Distance from any of them; but as to two of the Sisters, that lived in the Town where this Man every Day came, in the Neighbourhood of Guildford, they say, they lived there three Years, and gave free Influence of his Insanity: It don't appear they ever sent any Person to him to let him Blood, or to give him any Advice, or Physick; that doth not only make these blame-worthy, but, I apprehend, makes the Evidence they have given of his Insanity incredible, as coming from them, because it is hardly credible he should be so, and they not take that Care of him as they ought. They own that they knew he said to go out a shooting, and had desperate Weapons; they never sent any Body that went after him. Some of the Witnesses go to represent him as incapable of any sensible Action, for a great many Years, and therefore he is fit at the Bar in a Manner different from the rest of Mankind. But even here, when they talk of the Picture of his carrying his Gun, he says upon that, he hath often had his Gun go off in his Hand, but never had the Accident before. This Man they are setting to the Jury as a Man of Folly, of Compassion, capable of Compassion. Another Time he said, his Shot was Rabbit-shot. The Behaviour of him, notwithstanding he is fit, and put in that Form, will not have that Influence upon, but that if you are furnished he hath done the Fact, you will find him guilty.

Mr. Serj. Cloyne. I beg your Lordship's Leave to call a Witness or two: There is one remarkable Passage your Lordship will hear from the Witness: This was designed as a Recognition of this Fact, with respect to my Lord Ogleby, when it was handled, they had thrown the Ink upon it, instead of the Sord; says he, It is an ugly Accident, it must be writ over again, you had better stay till it be writ over again. I only offered it as a Paper signed with these Circumstances, to show his Behaviour.

Barwell Smith turns.

Mr. Serj. Cloyne. Did you see him sign that Paper?

Mr. Smith. Yes, I see him sign it.

Mr. Serj. Cloyne. Who wrote it?—Mr. Smith. I writ it.

Mr. Serj. Cloyne. I'd ask you, did he dictate to you, as you writ it?

Mr. Smith. I took it from his Mouth, as neatly as could.

Mr. Serj. Cloyne. What is the Import of it?

Mr. Smith. It is a State of the Case of what he had done to my Lord Ogleby, and how he came to do it.

Mr. Serj. Cloyne. You read it fairly from his Mouth?

Mr. Smith. I did it; it was read to him twice, and he read it afterwards.

Mr. Serj. Cloyne. Did he sign it?—Mr. Smith. Yes.

Mr. Serj. Cloyne. You observe some Ink fallen upon it?

Mr. Smith. After he had signed it, I went to put some Sand upon it, and in Mistake, I took up the Ink, and turned it up instead of the Sand.

Mr. Serj. Cloyne. What did he say?

Mr. Smith. As soon as I had done it, he said, Why you have blotted it so that it cannot be read, it must be writ over again! No, Sir, I believe not, if you think it will signify; he then said, Pray do all you are in your Power, use your Endeavour with my Lord Ogleby, to have his Fetters taken off, for they were very grievous to him. There was one of the Keepers in the Room, and I desired him to take Notice, it was his own voluntary Deed.

Mr. Serj. Cloyne. Look upon these Papers.

Mr. Smith. He wrote that Letter, and I gave it to my Lord Ogleby: I saw by him, and for him write.

Mr. Serj. Cloyne. Look upon that other Letter.

Mr. Smith. I did not for him write this.

Mr. Serj. Cloyne. You take it to be his Hand-writing?

Mr. Smith. Yes, I take it to be his Hand-writing.

(The blotted Paper read.)

Clark reads. Edward Arnold, now in the Marshalsea, &c.

Mr. Justice Trow. Did he put his Name so himself?

Mr. Smith. Yes, he did, he signed he might: It was read over to him, and he said, I must sign it; yes, if you will, but do not sign it, if there is any thing in it that is not right.

(The Letter produced, dated January 25, 1723.)

Mr. Smith. This I see him write; he writ it himself, without my saying one Word to him.

Clark reads.—To the Reverend the Lord Ogleby, &c.

Mr. Justice Trow. My Prayer to your Honour, that you would read or write Words, which may be of Use.

Mr. Serj. Cloyne. Su, will you give my Lord and the Jury an Account, whether you was with him while he was a Prisoner at any Time during his Confinement? And what passed between you? What Discourse? and how you apprehended him to be by his Behaviour? Whether he had the Use of his Understanding, for a Man under such a Load of Guilt?

Mr. Cor. I went, the Day he committed the Fact, to see him, at the House of Correction: I had been up to see my Lord Ogleby, and then I went to see him.

Mr. Justice Trow. What Time was it?

Mr. Cor. About Ten or Eleven o'Clock: Then, my Lord, he sat quite double, and did not speak a Word. I went the next Day, and he was brought into a Room; he seemed under a Confusion, but not Lornick; under a Horror of Guilt, but no Remorse; says I, What could induce you to do that Fact? Says he, My Lord Ogleby is the Plague, the Occasion of all the Plagues and Troubles in the Country: Who told you so? A hundred People say so, the very Boys in the Street cry out of my Lord Ogleby. I asked him Questions several Times, but it was very difficult to get Things out of him: he spoke low to himself, and you ask several Times, before you get an Answer, and when he did answer,

it was always rational. He would rail at my Lord Ogilvie, and that he was the Occasion of all our Plagues and Troubles, and a Man of evil Devices. Says I, Are you not afraid to suffer Death? Says he, It is better to die, than to live miserably. I went to see him the next Day: I ask'd him, Did you intend to kill my Lord Ogilvie? He had a dreaining way of speaking; Yes, to be sure. I said, Where did you intend to hit my Lord? Says he, When I shoot at a Rabbit, I always aim at his Head.

Mr. Serj. Ogilvie. Did he desire you to say any thing to my Lord? Mr. Serj. I was afterwards to see him, when he was in the *Marshall's*; he was very ill, I ask'd for him, and the Man in the Bed brought him to me: I ask'd him if he could drink some White-wine; Says he, The White-wine here is too strong for my Stomach; then I call'd for some Sack, and he had it. I ask'd him how he did, and he told down his Head, and said, In a bad Condition. I said to his Keeper, I believe he would die, he should have some Care taken of him; his Keeper said, It was common. The Prisoner said, These Irons are very heavy and troublesome, and fat down in a Chair, very ill. He desired me to speak to my Lord, and tell him how he was us'd, and they said him. I did speak to my Lord, and afterwards came to see him again, which was on the Twenty-ninth of October, my Lord Mayor's Day: I remember the Day, because I see my Lord Mayor, and the Companies, going to *Woolwich* by Water. I told him really, it is a hard Case, that a Man of such a good Family should suffer for, you ought to declare all that you know, it is an odd I hang to have a Man's enterprise; if you know any body that let you upon this, you ought to declare who it is, but have a Care you don't accuse the innocent; But he never did name any body to me, but he told me, I have sign'd a Paper, what is in that Paper is true: I press'd him to tell me the Truth, but he said at last, if my Lord Ogilvie will come here himself, let him, but let him send no more of his Fools after me.

Mr. Serj. Ogilvie. Have you any Reason to believe that he wanted the Use of his Understanding?

Mr. Serj. No; I went to School with him; we were in the same Class together: He was a frange, fullen Boy, such a Boy I never saw the like of him before, which made me, when I left School, that I never look'd to him since, till about two Years ago, and I was going up one Hill, I for him have a Penny by the Tail; I ask'd him, what he would have for it, he ask'd a Shilling for it; I told him, I would give him Sixpence, and a Pint of Ale; No, says he, it is hardly worth a Shilling, and a Shilling I will have.

Mr. Serj. Ogilvie. How long ago is this?

Mr. Serj. Christmas was two Years.

Mr. Serj. Ogilvie. You form'd a Notion of him from a School-boy, that he was a mischievous, faulty Fellow?

Mr. Serj. I did; I really thought, such a Temper as he set out with, must produce such a Man as he appears to be.

Mr. Justice Tray. He did behave himself last Night, when he pleaded, calmly, and as much in his Senses as any body.

Gentlemen of the Jury.

This Edward David, this unhappy Person, is indicted for a great Offence: The Law, on which the Indictment is grounded, is an Act of Parliament that pass'd the last Session of Parliament, and is entitled, *An Act, &c.* which is conformable to the ancient Law of this Kingdom, but that Law had been discontinued; if any Man did assault another, though Death did not ensue, it was made Felony, by the ancient Law of the Kingdom; but the Law is since altered, and it was not so, till this Act of Parliament was made. That is to show you, that though it is a new Law, it is just, and he that bath

not if the Reason of Law: All Laws are of equal Force, still repeal'd, have the same Power, but when they are repeal'd it has no further to be considered. There can't be a more bold and wicked Thing intended in the Design of it, than maliciously to shoot a Man.

To prove this Indictment, they have called a great many Witnesses: The first Witness they call is Mr. Flower. This happen'd to be done on the Twentieth of August last, in the Parish of St. Nicholas, near *Katharine-Hill*, as he was coming from Hunting with my Lord Ogilvie. When they came into a narrow Lane, near *Katharine-Hill*, he saw this Man coming towards them, to meet them, with his Gun in his Hand, and he observed his Gun was cock'd, and he said he look'd upon him, and his Countenance was changed, and he look'd pale. Like a Man that had some great Concern upon him; he observed and ask'd him the Reason of his carrying his Gun in that Manner, but he made no Answer, went on, carrying as he went, and when he pass'd them, he immediately turn'd short, shot my Lord Ogilvie, knock'd him off his Horse, and he fell from his Horse upon his Face. This is the Description he gives of the Fall. He is then ask'd, Whether ever the Prisoner was reputed a Madman, or distracted, or lunatick? For you see to understand, that was the main Point in this Case, and what the Prisoner hath for his Defence: And the Witness says, he never heard of his being mad, or his being reputed to be mad, or out of his Senses, notwithstanding he lives at *Guildford*, and this Prisoner lives very near him. At the same Time he says, that he knew very little of him, so that what he says, as to that, is not of great Weight. I told the Prisoner, as any Witness came to be examin'd, if he would have them ask'd any Questions, I would ask them for him. Instead of asking the Witness a Question, he said, He said that Way every Day, and he was forty six what was done.

Mr. Justice Tray. The next Witness he says he was very near my Lord Ogilvie when this Accident happen'd. He gives you much the same Account as the other Witness did, only adds, that he preferred his Piece, took Aim, and shot at my Lord Ogilvie: The Event of the Shooting, he describes in the same Manner as the other Witness does, so upon that, the Man went on, and he follow'd him; the Witness follow'd him, and told him, he had kill'd my Lord Ogilvie, and he would be hang'd for it; What, says he, I shall not be hang'd to Day, and he would have charged again; with what Intreat you are to judge of upon the Circumstances of the Case. The Prisoner was brought back to my Lord, and on Sight of

him, my Lord said, You Villain, you have kill'd me. This Witness brought he had a Design to fall on my Lord Ogilvie again, that is uncertain; his Gun was taken from him, but he apprehended something of that kind, and that he intended some further Mischief against my Lord Ogilvie. He said, When he shot, he aim'd at my Lord's Head, but the Wound was only in his Shoulder: And the Prisoner being ask'd, if he had any Questions to ask this Witness, said, He did not know what to say. This Gentleman says, he never took the Prisoner to be a Madman, but a fullen, rascally Fellow, and he said to go a Shooting, and a Filibustering.

Another Witness is Mr. French; he says, he was with my Lord Ogilvie, and saw the Prisoner coming up, and he told Mr. French, that he believed he had some Design against him, for, not long before, he had taken away his Horse, in the manner he describes. It is not material to run through all the Particulars, and he did not know, but he had a Design upon him; he look'd very stern, and after he had pass'd my Lord, he immediately turn'd round, and shot, as you have heard. He was ask'd, How he could see at that Distance, when he was behind my Lord, in the same Track? so that my Lord must be between him and the Prisoner. He said, my Lord and he were in the Horse Track, and the Prisoner was in the Foot Way, which was a different Track. This Witness is ask'd, Whether he took him for a Madman, or a Lunatick? Gentlemen, he says likewise the same as the other Witness. That he always was a fairly, a rascally Fellow, and did not care to talk, but he did not take him to be a Madman: The Prisoner then said, He had often had his Gun go off in his Head, but never had such an Accident before. When this Witness ask'd the Prisoner, Why he did not shoot him, because he had talk'd to him about running away with his Horse, rather than my Lord Ogilvie? He said, You are an innocent Man.

The next Witness is one Mrs. Smith: She says, she came to her Shop that Morning as my Lord Ogilvie was shot, so by Fire Powder and Shot, and when her Daughter came and asked him what Size Shot he would have, he said, The biggest they had, but the Daughter came and told her they had none of that in the Drawer: then she bid her give the second Size, No. 2, which he did, and he paid her for it. This Witness tells you, he had been a very good Customer; and that the Shot he usually had was another Sort; and he never ask'd for, or had, this big Sort before. That shows, Gentlemen, and from whence they would infer, and it is fit for you to consider, whether he had not some more than ordinary Design, greater than what was usual when he went to kill Rabbits, which is a thing much relied upon in the Course of this Trial. When he is asked if he will ask this Witness any Question? He says he hath several times bought Shot of her; and he is asked whether she took him for a Madman? She says she always took him to be as sensible, by his Dealings with her upon the Account of what he bought, as any body, and that he never had any of the biggest Shot before: She tells you he paid for it as he used to do. And this Prisoner on this Occasion swears, that he had often bought of her Powder and Shot frequently.

The next Witness is *John Smith*: He says he met the Prisoner, and the Prisoner asked him if my Lord Ogilvie went a Fox-Hunting. This Witness was ask'd whether he looked upon him to be distracted? He said, No, he never did. Sometimes he went out a fishing with him; sometimes he would talk very well, and sometimes not give him a Word; that he was a rascally, fullen Man: He says he was a great Follower, but his Tackle was wrong, a coarse gaming Sort of Tackle; he was no great Attill at it; and that he often shot Rabbits.

The next Witness is *John Smith*: He says he saw the Prisoner the same Day, and he asked him if my Lord Ogilvie's Hounds were out a hunting? He told him he did not know; he was curious and a damning my Lord Ogilvie, and said, If he saw him he would shoot him. This was about two Stones Throw from the Place where this Accident happen'd. He said he hath several times been in a Boating with a Gun, very often. He was asked whether he took him to be a Madman? He said he never talked much Sense, and he would often rail, and swear, and swear to himself; Then the Prisoner said himself he never swore; the Prisoner observed it upon that Occasion, that he never swore; and the Witness says that he took him that Morning to be in Drink; and when he was asked, Whether he took him to be distracted? he said, He did not see him to be sober, he was not right in his Senses, he would talk and swear to much to himself.

The next Witness is *John Smith*: He says he saw the Prisoner that Day; he says he heard his Gun go off, and he came afterwards into the Publick House where he was, and the Witness asked the Prisoner if he had shot a Rabbit? He told him he had shot nothing; it was only in discharge his Gun: From whence they make an Observation for the King, Why should he discharge his Gun, unless it was that he might be more sure of its going off when he charged it again, for it might be wet and damp by lying by? That shows his Reason and his Judgment, if he did this, it shows it was not the Effect of sudden Rage and Distraction, but a premeditated thing, laid with Design and Artifice, and that he had the Use of his Sense and his Reason: if that was the Cause of his discharging his Gun, though no Reason is given for it; And what Reason could it be? for they do not offer any Reason, unless it was so secure it, that the Gun should go off for it having remained charged some time before, it may be moist, and so would not go off: Whether he discharged it for that Reason, I must leave that to you; he only said he had discharged it. This Witness says, he was at that time in a very fierce Temper, and he never took him to be mad or distracted: He was cunning in all his Dealings with him. This Witness was a Taylor, and had Dealings with him as a Taylor for some time; he said he paid him very honestly and well, but he was always very hard: He says when he was once with the Prisoner before this Accident, and the Prisoner asked him what Sort of a Man my Lord Ogilvie was, and what my Lady Ogilvie was, the Witness gave them both a good Character, and speaking of my Lady that she was a good Woman, says the Prisoner, Why don't she cut my Lord Ogilvie's Throat? He says he used to shoot Rabbits, and afterwards he went to see him when he was in the House of Correction, and he ask'd him what the People said; and he said the Vogue of the People at *Guildford* was, that

The next is *Mary Adonis*: She says she always thought him to be mad by his mad Actions: she says he would curse and swear, and that the *Guards* before he shot my Lord Ogleby he came to their House, and called in, and looked in wildly, that he was frightened: When he was in Prison he earned him Vitale, and the *Guards* told her being no Bones, nor Knives, for they were afraid he would do himself a Mischief; then he asked a Boy that was with her, whether they were played with the *Bolles* and *Buggs*, as formerly!

The next is *Stephen Fache*: He says they found him in *Leagly* Lodge, lying only upon the Wood, in a Morning, about two Years since, in the Spring of the Year, about Seven o'Clock in the Morning.

The next Witness is *Robert Dandy*: and he says he always thought him a crazy Man, feldom in his Senses; he says he hath threatened to beat his Father.

The next is *Mary Samsom*, the Wife of ——— *Samsom*, where he lodged, as hath been observed, for a matter of fifteen Months, and at that Time, she says, she thought him a Madman, not in his right Senses. Once they could not prevail upon him to come into the House, because he had said, there were *Rogues* hid, and he did lie out that Night. She gives you the same Story, about the Hammer of Wine; and that the Prisoner talked to her Husband, that there was too great Familiarity between her and my Lord Ogleby. Sometimes he would pretend to read in the Bible: Once he read in the Bible two or three Chapters very well. Another Time, being wroth, he gave him the Bible, and asked him to read, he pretended to read, but appeared much fitter to sleep as ever was in the World: He then asked of my Lord Ogleby's playing him. She tells you, that he did not be at home that Night before this Accident happened, but was home from in the Morning; and he went out, and came back again, and then the Boy told him, that Mr. *Wise* wanted to have his Rabbits killed, and the Boy and he was to go *Hawes*, and the Murder did lend him a Shilling to buy Powder and Shot for that Purpose. Now it turns, the Place where Mr. *Wise's* Conies are, is near the Place where this Accident happened, so that they would have you think, that this Powder and Shot, which he bought, was to kill these Rabbits, and that he was going that Way in order to it. You will remember what was proved as you about the *Shoe*, that it was not the usual *Shoe* that he bought, but a bigger *Shoe*. He went up the Lane, the Witness tells you, towards the Place where *Wise's* Conies were: Soon after that, he heard a Gun go off, and the thought he had been killing some of the Rabbits; but soon after, the law several Horfes, and Nobody upon them, and some Gentlemen, and they came and asked her for some Water and Brandy, to relieve my Lord Ogleby under his Misfortune; and then she came to hear, that the Gun that went off, infixed of killing Rabbits, went off against my Lord Ogleby. She says, the faith heard him say, he would kill my Lord Ogleby: She says, he hath sometimes threatened to kill her, but yet did not do her any Harm. They think this Evidence to be very material, that they have produced two Witnesses, that tell you, that they heard this *Mary Samsom* say the very same Things to them, as she hath now given in Evidence.

The next is *Mr. Capeland*, he says, he was with the Prisoner in the *Meeting*, and then he asked him, What induced him to do so horrid a Fact? He said, My Lord Ogleby had bewitched him: He asked him, If any body had put him upon it? At first he hesitated, but afterwards he said, Nobody. He was very confused, and he thought him mad.

The next is *Mr. Dwy*, he said, He often examined him, could get no Answer from him, but said, My Lord Ogleby had bewitched him, and was a Trouble to him. This is the Evidence on behalf of the Prisoner, to show that the Prisoner is mad, and what he did, as such, is no Crime; and therefore no great Weight ought to be laid upon it.

But by way of Reply, they have read Papers under his own Hand. Mr. *Barnell* Swath, he was with him, and he hath proved them to be his Hand. One Paper is the State of his Cafe, and the Witness writ it, but he took it from his own Mouth, which is the same as if he had writ it himself, and the Prisoner signed it. It happened to be blessed; this is mentioned to show his Senses, and that he was a Man of Distinction; says he, You have blessed it, it can't be read, it must be writ over again: The Witness told him, No, it would do; Well, if it be so, I will be satisfied; and he desired the Witness to pray my Lord Ogleby, that his sins might be taken off, for they seem very grievous to him. The next Paper is (here are three) a Letter writ with his own Hand; and here is another Letter writ with his own Hand: Both books agree, that the Jury might have the Papers to peruse. In this Paper, he says, He was excused to this by ——— and the Refinement he expressed to my Lord Ogleby, proceeded from several Persons, persuading him, that my Lord Ogleby was the Occasion of all his Troubles, and several Persons came here, and took the Advantage of it, and told him, that he was the Occasion of all his Troubles: This he gives you as the Occasion of his great Refinement against my Lord Ogleby: This is as rational an Account as any mortal Man can give. Then there is this Letter, then he writes to my Lord Ogleby: It is directed, To the Reverend Lord Ogleby; but in the Letter it is, Please your Honour to take into your Consideration, &c. and the other Letter is much to the same Purpose: These you will have along with you.

Then you hear Mr. *Cox*, and he went to him the Day the Fact was committed, and at that Time he would say nothing to him: The next Day he went again, and then he said, My Lord Ogleby was the Occasion

of all his Troubles. The third Day he went, and asked him, If he intended to kill my Lord Ogleby? And he said, Yes, to be sure: Where did you intend to hit him? Says he, When I shoot at a Rabbit, I always aim at his Head. He went to him again, when he was in the *Meeting*, and he was very ill, and he asked for some White-wine for him, but he said, The White-wine was too sharp for his Stomach; and then he called for some sack, which he had; and he held down his Head, and formed in a bad Condition. Then he professed him to know who set him on work; and he said, If my Lord will come here himself, let him, but let him not send any more of his Fools after me.—This Gentleman says, he was his School-Fellow; he was just of the same Nature then, a ragged, dogged, humorous Fellow, hardly cared to talk or speak to any body, he is just the same now, though he hath had no Conversation with him since; but about two Years ago, he fed him, and he had a Vile in his Hand to sell, and he asked to buy it, and offered him Sixpence for it. My says he, it is hardly worth a Shilling, and a Shilling I will have. This is mentioned, to show that he was a Man very sensible, made a very sensible Answer; no Man could make a proper Answer than this Man did.

This is the Evidence on both Sides. Now I have laid it before you, and you must consider of it; and the Showing my Lord Ogleby, which is the Fact for which this Prisoner is indicted, is proved beyond all manner of Contradiction; but whether this showing was malicious, that depends upon the Faculty of the Man. That he did, and that wilfully, but whether maliciously, that is the Thing: I have in the Question, Whether this Man hath the Use of his Reason and Senses? If he was under the Visitation of God, and could not distinguish between Good and Evil, and did not know what he did, though he committed the greatest Offence, yet he could not be guilty of any Offence against any Law whatsoever; for Guilt arises from the Mind, and the wicked Will and Intention of the Man. If a Man be deprived of his Reason, and consequently of his Intention, he cannot be guilty; and if that be the Case, though he had actually killed my Lord Ogleby, he is exempted from Punishment: Punishment is intended for Example, and to deter other Persons from wicked Delights; but the Punishment of a Madman, a Person that hath no Design, can have no Example. This is on one Side. On the other Side, we must be very cautious; it is not every fantastick and idle Humour of a Man, that will exempt him from Justice, and the Punishment of the Law. When a Man is guilty of a great Offence, it must be very plain and clear, before a Man is allowed such an Exemption; therefore it is not every kind of fantastick Humour, or something unreasonable in a Man's Action, that points him out to be such a Madman as is to be exempted from Punishment: It must be a Man that is totally deprived of his Understanding and Memory, and doth not know what he is doing, no more than an Infant, than a Liar, or a wild Beast, such a one is never the Object of Punishment; therefore I must leave it to your Consideration, whether the Condition this Man was in, so it is represented to you on one Side, or rather, both these a Man, who knew what he was doing, and was able to distinguish whether he was doing Good or Evil, and understood what he did; and it also be observed, they admit he was a Lunatick, and not an Idiot. A Man that is an Idiot, that is born so, never recovers, but a Lunatick may, and hath his Intervals; and they admit he was a Lunatick. You are to consider what he was at this Day, when he committed this Fact. There you have a great many Circumstances about the buying the Powder and the Shot; his going backward and forward: And if you believe he was sensible, and had the Use of his Reason, and understood what he did, then he is not within the Exemptions of the Law, but is as subject to Punishment as any other Person. Gentlemen, I must leave it to you.

Then the Jury withdrew to consider of their Verdict, and in a short Time returned again.

Cler. of the Ass. Gentlemen, answer to your Names.

Here, and so the rest.

Cler. of the Ass. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cler. of the Ass. What shall I say for you?

Jury. Our Verdict.

Cler. of the Ass. Edward Arnold, hold up thy Hand. (*He holds it up*.) Look upon the Prisoner, now lay you, is Edward Arnold guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cler. of the Ass. What Goods or Chattels, Lands or Tenements?

Foreman. None, to our Knowledge.

Cler. of the Ass. Then hearken to your Verdict, as the Court hath recorded it. You say Edward Arnold is guilty of the Felony whereof he stands indicted; and that he had not any Goods or Chattels, Lands or Tenements at the Time of the Felony committed, or at any Time since, to your Knowledge, and so you say all.

Whereupon, he received Sentence of Death: But at the Intercession of the Right Honourable the Lord Ogleby, his Execution was refused, and he continued a Prisoner in the New Goal, Southwark, upwards of thirty Years, and there died.

A N

A P P E N D I X,

C O N T A I N I N G

TRIALS, RECORDS,
ARGUMENTS IN LAW,
DYING SPEECHES, &c.

RELATING TO THE FOREGOING

Trials and Proceedings.

A P P E N D I X.

N U M B E R I.

The Arraignment of Sir Thomas Wiat, Knight, at Westminster, xliiii Martii, Anno Primo Mar. R. 1554.*

THOU art Indicted, Sir Thomas Wiat, Knight, for that thou, on the 14th Day of February, last, at Brayfield, in the Countie of Middlesex, leavest Warre against our Sovereigne Ladie and Queene, her Crowne and Dignitie: How falsest those? Art thou Guiltie, or No?

Wiat. My Lordes, if I should please Guiltie, should I not be then excluded afterwards to use crasse Thinges that I have to say?

Cornu. You shall, Mr. Wiat, have Leave to say and be heard what you can.

Wiat. Then, my Lordes, most I confesse Guiltie, as in the said Trowthe most enforce me to say?

I must acknowledge this to be a just Plague for my Sinnes, which I most grievously have committed against God, who hath suffered me to fall into this heathen Brutishenes, and horrible Offence of Treason.

And for in me the like, and as farbe, who amongst like *Esop* perle from the Beginning: For perle the Chronicles shew, and you shall read, that never Rebellion against their natural Prince and Countie, from the Beginning, prospered: *Howe* the Illith was but a Rebel, for to make I call him; he continued not long, but at the said default, it fell into the right Lyne againe: and the Usurpation revealed in his Blood: For the Love of God, all you Gentlemen that be here, remember, and be taught by Examples past, as also by thys my present Infelicite, and most heinous Offence.

O most miserable, mischevous, and bestidde, furious Imagination of mine: For I thought, that by the Marriage of the Prince of Spain, the second Parson of this Realme should have bene in Danger.

And I who have lived a Freeman borne, should together with my Countie have bene brought to Bondage and Servitude by Aliens and Strangers; which brutish Brutities then seemed Reason, and wrought so fast, and to such Effect, as it led me to the Use and Practice of this committed Treason: But now, acknowledging the great Commendation, Honor, and Service, which this Realme shall receive by this Marriage, if it shall please the Queene to be mercifull unto me, therein no Man living that shall more truelie and more faithfullie serve her Highnes, whatsoever the Quarrell be: I serve the Queene's Highnes against the Duke of Northumberland, as my Lord of *Arundell* can witness: My Grandfather was upon the Rache for her Majesties Grandfather: My Father served King *Henry* the Villth, and I served him likewise, as also her Grace's Brother, and in Wunche of my Blood left in the Fesche, I carie a Mayme. I alledge not all this, either to Merit or Advancement, for by this heathen Brutishenes, to which most miserable I am fallen, and I have not onely accused my owne Deathe, but overthrow my House and Name, and delaced all my Father's Well-doings, if ever there were any.

I will not justify my self in any thing, neither can I alledge any Excuse of my Offences, but most humble submit my self to the Queene's Majesties Mercie and Pardon.

Drinking your, my Lord of *Suffolk*, and your Mr. *Hoffier*, with all the rest, to you a Meane to the Queene's Highnes for Mercie; for Pettie is the greatest Treasure that ever God gave to Man, and it is that which he especially haile chaste to himself, which if her Highnes will vouchsafed on her Merit to believe it so him who that he most glad to serve her Highnes, and readied to die in her Grace's Cause: For I groweth before the Judge of all Judges, I never more Hurte against her Highnes Person.

The Queens Answer. Mr. Wiat, you have great Cause to be sorry and repentant for the Fault whereby you have not onely annoyed yourself, but also Numbers of other Gentlemen, who being true Men, might have served their Countie. Yet, if you had gone no further, it might the better have bene borne withall: Not to contented, you procured the Duke of *Suffolk*, a Man fore trained to your Purpoise, and his two Brethren also, by which, without the Queene's Mercie, you have overthrow the noble House: Yet not to stand, you attempted the second Parson of this Realme, who should have bene all our Comfort, whereby her Honor is brought in question, or what End it will come unto, God knoweth, and this are you the Author of.

Wiat. Good Mr. Attorney, as I will not in any thing justify my self, for being in Decree to much, overcharge me not with more Mischiefe, and make or shew to be that I was not: I am loathe to touch any Man openlie, but that for myne owne Discharge, I am driven far to do: And as I have given in Confession, so I affirm, that my Lord of *Drumme* sent Sir *Edwarde Rogers* for me to come to my House, and when I came, he brake the whole Treason unto me; he said, that he himself would go, and I cannot tell, but he said he would doe many Thinges: This proves I was not the faultie.

The Queens Solicitors. As Mr. Attorney hath moved you, that is,

to repent your Offence, so I, for my Parte, wille you the same: But what were you furtie, when you said, to write to my Ladie *Elizabeth's* Grace, that she should remove further from the Queene, and also that my Lord of *Norfolke's* Men held from him at *Reynolds Bridge* to you, as a joyful Newes you sent to my Ladie *Elizabeth* of your good Success, and the againe sent your Thanks: Is not this true?

Wiat. What I have written, I confesse, and it is true.

The Master of the Harp's Answer. Mr. Wiat, we are not thies yours Writtes, and as such Terms, when Mr. *Grosvenor* and I were sent unto you from the Queene, you answered us, that the Queene should goe to the Tower, and you to have her Parson with the Tower in keeping, also the Tresant, and furtie of the Councilors as you would require; for you said you had rather be trusted than trust.

Solicitor. This had be ever called *Wiat's* Rebellion, as the Rebellion of *West Tyle* was called *West Tyle's*.

Attorney. Mr. Wiat, were you not privie howe the Queene should have bene flane, as she did walke? I do not burden you to consent to this; for thus muche must I say, you wilked it.

Wiat. My Attorney, I furtie opened this, coming to my Remembrance when I heard *William Teme* would have flane himselfe, for it was his Device, and he brake in this way to Sir *Michell de Seile*, *Yf* the Queene were killed, quoth he, all weare wile, and then he doo it a Man to doe it as *Jane Fitzwilliam*. Sir *Nicholas Arundell* tolde it Sir *James Croft*, and he tolde it *Jane Fitzwilliam*, and *Jane Fitzwilliam* tolde it me, and thus at the 4th Hand I heard it. Then made I a Cattel with a whole Beest in it, with a whole Iron and half a Yard of ——— in it, and sought *Jane Fitzwilliam* a whole Day, and could not finde him. The next Day, I sent the Cattel by my Man, and told him both him well, for the Kneave it but a spee, and to utter it he durst not, and therefore be heald to beate him? Then my Man carried the Cattel thre Days, to have beaten him: By this it was apparent, how much I abhorred that Practice.

Then was the Letter showed which be wrote to the Duke of *Suffolk*, Mr. Wiat being then in *Southwark*, that he should meet him at *Kingsbridge*, and to go to *London* with him, althowhe he came with the *Flower Company*. *Wiat* at the furtie remembered so fath Letter; but when it was showed him, he confessed his Hande.

It was demanded of him, what he ment to referre to my Ladie *Elizabeth*; and after his Pardon offered, to refuse also the Countess of the Queene to my Ladie *Elizabeth's* Grace, among other things befidde sent.

Wiat. My Lordes, as my Fault is most vile and heinous, for the which I alke God Mercie, and next him our Sovereigne Ladie and Queene, whom I most grievously have offended, appealing whole to her Mercie, without which I cannot challenge any thinge I have committed. I have served her Highnes in such force and degree as I either could or am able; for I have uttered what I knowe in all thinges, whereby I might deliver her Highnes from further after Perill as the Concealment of Trators or Treason might prejudice or harme: I have done this for her Highnes Service, as I am bounde therto by Duty and Trowth, which truly I have declared; for I think and earnestly believe, she is as careful for this Realme as of shes a cherefull Jewell: I must confesse that of all the Services I have bene in, there was never a more deperat Journe taken in hande, and in the said continued most deperat. And whens it was asked how I related the Queene's Highnes Pardon offered, unspoke Man, what said I?

When I was once entered in that desolable Deperatnes, there was no waie but to wade through with it that I had taken in hande; for I thoughte others had bene so forward as I my selfe; and following the *Esop*rice, used all goodli meanes that might endure the force, as writing to my Ladie *Elizabeth*, and making the Proclamation in *Southwark*. Well, their selfe now in the Queene's Highnes, either of Justice by Death, which justice I have deferred with *West Tyle*, to make me an open Example to the Worlds Eyes; or els of her Mercie to save me, and use my Service in furtie force as her Highnes thinkes me meet and humble to doe: And albeit that her Grace hath this my Request in Writing, yet I most humble beseeke you to be a meane to the Queene's Highnes for her Mercie and Pardon, which is my laste Hope and onlie Refuge: And I beseech God that the Queene may be so mercifull unto me, as I meane to serve her Majestie faithfullie and true. God's Will be done on me. Yf ther be but two true Men, I will be the one to die at her Grace's Foote: And so ended.

The Lordes proceeded to be a meane for him; his Countenance was dolefull, and Teares gushed out continually.

He was afterwards executed.

* From the MS. of Dr. *Barnard* formerly Lib. of *Barnard* in *Gloucestershire*, 1502. f. 1. See Catalogue *Liberarum Manuscriptorum Anglie* & *Hiberniae*, Tom. 1. Part 2. Page 126.

NUMBER II.

The Examinations and Depositions of William Powrie, George Dalgleish, John Hay younger of Talo, and John Hepburn of Bowton, concerning the Murder of the King, Queen Mary's Husband; with their Trial and Sentence: As also, the Declaration of Nicolas Hubert, a Frenchman, commonly called Paris, in relation to that Murder, and other Matters;*

Who were all executed for the said Murder.

The Depositions of William Powrie.

Apud Edinburgum, 23 Junii, Ann. Dom. 1567, in presens Demission Secreti Concilii.

WILLIAM POWRIE, borne in *Kingsmuir*, Seniores to the Erie of *Burgh*, deposes, That ye first Day the King was slain at *Night*, the Erie *Burgh*, accompanied with *James Ormiston* of *ye ilk*, *His Ormiston* his Father Brother, *John Hepburn* of *Bowton*, and *John Hay* younger, and together to an *Concillie* in ye north Hall of ye said Erie *Burgh*, *Lodging* in ye Abbey, about four Hours after-noon, or nearby, and remanent yairin *Twa* Hours, or yairin; quhat yai did or no, he knowis not.

Item, Deposits, Yai *John Hepburn* of *Bowton*, at *Ten* Hours at *Even*, commaneth the *Depositor* and *Pat Wyllye* to tak up an *Carriage* of *two* Mails and *one* *Trunk*, and ye *three* as *holders* *Mail*, quikils werchid in the said north Hall, quikils the *Depositor* and the said *Pat* put on and charged upon *two* Hories of *Mr. Lordis*, the *one* being his *own* Hory, and tairin the same to the *Zet* of the *Entrance* of the *Black Friars*, and yair laid the same down, quikils the Erie *Burgh*, accompanied with *Robert Ormiston* and *Peris*, called *French Paris*, and *others* *two* quikils had *Clothes* about yair *Laure*, sent the said *Depositor* and *Pat Wyllye*. And yair young *Talis*, the *Laird* of *Ormiston*, and *John Hepburn* of *Bowton*, was awaked yair ye *Depositor* and *Pat Wyllye*, within the said *Zet*; and *one* yair the said *three* Persons within the said *Zet*, refused the said *three* Charges, quikils the *Depositor* knew to be *False*, becaus the same was as *lundy* *Yule* within the said *Mail* and *Trunk*; and ye *Depositor* and *Pat Wyllye* help yair in the same; and the *Powder* being taken from yair, the said *John Hepburn* of *Bowton* sent this *Depositor* for *Candell*, and yair he oit *six* *Halpeny* *Candell* for *Garth Barrie* *Wife* in the *Concillie*, and deliver to the said *John*: And yai ye said *Depositor* *Refuseth* of the *Powder*, had *one* *Towell* with *even*, with *one* *lirid* *hired* *Candell*; and the said *Persons* within the said *Zet* support the *Trunk* and *Mail*, and took out the *Folks* with the *Powder*: And *every* *one* of yair *took* yair *own* *his* *Back*, or *under* *his* *Arm*, and tairin the same away to the *Black-wall* of the *Zet* yai is *next* the *Trees*, and yair the said *Laird* of *Ormiston*, *John Hepburn* of *Bowton*, and *young* *Talis*, refuset the *Powder* *for* yair, and wald suffer the *Depositor* and his *Marrow* to pass *no* farther. And quhen the *Depositor* and his *Marrow* came bak againe to the said *Frier* *Zet*, the *two* Hories that carryed the said *Mail* and *Trunk* yai *was*, and ye *three* carrye the said *Mail* and *Trunk* again to the *Abbey*, and as yai came up the *Black Frier* *Wind*, the *Queen* *Grace* was ganged before yair with *licht* *Torches*: And yair the *Depositor* and his *Marrow* being comin to the said *Erie* *Lodging* in the *Abbey*, that tairin yair *one* *Hour* or *more*, and yin the said *Erie* came in, and immediately tak off his *Clothes* yai *was* *on*, *one* *a* *Pair* of *black* *Vel*, *one* *Hood*, *quikils* *was* *black*, and *one* *Doublet* of *Satin* of the *fine* *Blauze*, and *per* *on* *an* *other* *Pair* of *black* *Hose*, and *one* *Doublet* of *Canvas*, and tok his *late* riding *Cloak* about his, and *incontinent* put forth, and accompanied with *French Paris*, the *Depositor*, *George Dalgleish* and *Pat Wyllye*, and came down the *Turnpike*, and along the *Back-wall* of the *Church* *Garden*, quikils yai came to the *Back* of the *Church*-house, and the *Back* of the *Stubble*, while they came to the *Greenway*. And *dis*-posed, Yai as yai came by the *Gait* of the *Queen* *South* *Garden*, the *two* *bestmen* yai shude at the *Zet* yai gänge to the *same* *Cloak*, *stieit* at yair, *Quhat* is yai *it* yai *incontinent*, *Friends*. The *Central* *spirit*, *Quhat* *French* and yai *incontinent*, *My* *Lord* *Burgh* *Friends*.

Item, Deposits, Yai yai come up the *Concillie*, and to the *neither* *Row*, and *incontinent* the *three* *backed*, *Pat Wyllye* crye to *John* *Galloway*, and *delist* him to open the *Port* to *Friends* of *my* *Lord* *Burgh*, quia *even* and *appon* the *Port*, and yai *enter*, and *seid* up *above* *English*, quia *even* on the *South-side* of the *Way*, and *knock* at *one* *Stair*, and call for the *Laird* of *Ormiston*, and *Robert Ormiston*, and *name* *incontinent* yair, and yai yai *supper* down *one* *Cloak* beneath the *Frier* *Wind*, and come to the *Zet* at the *Black Friars*, and *enter* in at yair *Zet*, and *seid* quikils yai come to the *Black-wall* and *Dyke*, quikils the *Depositor* and *Pat Wyllye* had the *others* *Persons* before *expyriant*, with the *Powder* as *had* *no*, and yair the Erie *Burgh* put in over the *Dyke*, and had the *Depositor*, *Pat Wyllye*, and *George Dalgleish* tairy *bell* yair while he *came* *backward* to them. And *latter* *deposits*, Yai yai tairin yair *Hall* *an* *Hour*, and *heid* *never* *Don* of yair *Thing*, quikils at *last* *my* *Lord*, accompanied with *young* *Talis*, and *John Hepburn* of *Bowton*, came to the *Depositor*, and *whent* *two* *Persons* being with him, and *even* as *my* *Lord* and *the* *Twa* come to the *Depositor* and his *Marrow* at the *Dyke*, that *heid* the *Crack*, and thus gait away together out at the *Frier* *Zet*, and *incontinent* quaten yai came to the *Concillie*, *Pair* up the *Blackfrier* *Wynd*, and *Pair* up the *Chieft* which is under the *Endynghs* *Well*, and *not* *not* quikils yai came to the *End* of the *Row*, and *seid* down *one* *Cloak* on the *North-side* of the *Gait*, or *had* *loppin* the *Wall* of *Laird* *Wynd*, and yai *my* *Lord* *threucht* it over *keich*, and came againe back to the *Port*, and called cry upon *John* *Galloway*, and *Laird* yai *was* *Friends* of *my* *Lord* *Burgh*, And *John* *Galloway* *raic* and *hek* them forth, and *fyne* yai *put* down *St. Mary's*

* Taken from the MSS. Library, Ad 56. Galloway, C. 1. Fol. 245, 26. This is the Book B in 1522 after the 1.1 of James Earl Burgh, 15 Vol. 1. p. 21.

Wynd, and down the *tack* *Zaird* of the *Concillie*, and to the said *Erie* *Lodging*; and as yai *put* the *Queen* *Grace*, *where* *specific*, *from* *Sentinels* *point* at *pass* *quien* yai *was*, and yai *incontinent*, yai *was* *Friends* of *my* *Lord*, and *its* *point* *quhat* *John* yai *was*, and yai *incontinent*, yai *know* *ney*, and yai the *Sentinels* *and* *them*, if yai *were* *Sentinels* of *my* *Lord*, *Burgh*, to *gang* yai *Way*.

My *Lord* *come* into his *La* *Wynd*, and *immediately* *is* *ill* for *one* *Drink*, and *take* off his *Clothes* *incontinent*, and *seid* to his *Body*, and *stret* in his *Bed* about *Half* *an* *Hour*, quaten *he*, *George Dalgleish* come to the *Zet*, and *knock*, and *delist* to be in, and quaten he came in, he *appon* *is* to be in *one* *grin* *and* *fyne*, and *was* *black* as *any* *Pik*, and *not* *one* *Way* to *Go*. *My* *Lord* *enquire*, *Quhat* is the *Matter*, *Man*? And he *incontinent*, The *King* *Has* *is* *blown* up, and *I* *now* the *King* *be* *saye*. And *my* *Lord* *crye*, *Fy*, *Treason*! And yai *be* *raic* and *put* on his *Clothes*. And yairer the Erie *Haush* and *money* came in to *my* *Lord*, and yai *seid* into the *Queen* *Grace*.

Item, Deposits, Yai upon the *sixt* *Nicht* efter, *my* *Lord* *desist* yai *Depositor*, *Pat Wyllye*, *George Dalgleish*, the *Laird* of *Ormiston*, and *His* *Ormiston*, *John Hepburn*, and *young* *Talis*, to *gang* *than* *Tongues* *clothe*, and yai *seid* *ever* *went* *as* *long* as he *hid*, and yai he *hid* *be* *honestly* *incontinent*. And being *inquire*, *Give* this *Depositor*, at *my* *Lord* *Burgh* *Desire*, *hecht* *one* *fyre* *Laure* of *one* of the *Soldiers*: And *incontinent*, Yai he *did* the *same*, and *put* a *Piece* of *fine* *Laure* of *half* a *Faldouze*, or *yairin*, *his* *one* of the *Soldiers*, quaten *his* *name* *he* *knows* *not*, and *delist* to *John* *Hepburn* of *Bowton*, upon *Saturday* before the *King* *daughte*.

Apud Edinburgum, 3 Julii, Ann. Dom. 1567, in presens Demission Secreti Concilii.

WILLIAM POWRIE re-examinet, deposes, Yai the *Carriage* of the *Trunk* and *Mail* consent in his *former* *Depositions*, *was* *carried* by *him* and *Pat Wyllye*, upon *one* *gray* *Hors* yai *portured* to *Hornes*, *Page* to *my* *Lord*, at *two* *lundy* *Tymes*, and *was* *carried* and *conveyed* by *them* into the *Place* *contamin* in his *former* *Deposition*, and yai at the *Frier* *Wynd* *Pass* yai *Depositor* laid to *Pat Wyllye*, at *the* *conveying* of the said *Carriage*, *their* *Words*, *Jesu*, *Pater*, *quatin* *was* *Gait* in yis *we* *are* *ganged*? *I* *now* it *be* *not* *good*. And he *incontinent*, *I* *now* it *be* *not* *good* *but* *well*, *heid* *zair* *Tongue*.

Item, Deposits, Quaten the *Depositor* and *Pat Wyllye* come to the *Frier* *Zet* with the *last* *Cowry*, and *had* the *same* *down*, *Robert Ormiston* come forth, and *said* their *Words*: This is *not* *good* *like*, *I* *now* this *Purpose* *will* *not* *come* to this *Nicht*, *I* *will* in and *be* *quhat* yai *are* *doing*.

Item, Yairin quaten the *Powder* and *Gravel* *was* *carried* *incontinent*, the *Depositor* *carried* at the *Dyke*, the *Laird* of *Ormiston* of yai *lik* *came* *again*, and *hid* to *John Hepburn* and *young* *Talis*, *my* *Words* (*Paris* *Frenchman* *being* *with* *him*) *Be* *God* it is *far* in *Fieit*, *can* it *quhat* *will*, and *bade* the *Depositor* and *Pat Wyllye* *gang* *their* *Way*; and at the *same* *tyne* yai ye *Depositor* and *Pat Wyllye* *laid* down the *last* *Carriage* at the said *Frier* *Zet*, the *Erie* *Burgh* came *into* *charge* *between* the *Frier* *Zet*, accompanied with *three* *more*, quikils *had* *pare* *Cloaks*, and *Mails* upon yair *Feet*.

Item, Deposits, Yai the said *John Hepburn* of *Bowton*, upon *Saturday* at *Even* before the *King* *Slaughter*, brought the *Mail* and *Trunk* quikils the *Powder* was, to *the* *Erie* of *Burgh* *Lodging*, and *had* in the *same* in the *neither* *Hall*: And the *Depositor* *declares*, Yai at the *last* *Hors* *Carriage* *be* *here* up *one* *secret* *Founder* *Barrel* to the *same* *Place* yai *carried* the *Powder*, and yai he *will* *not* *know* *as* *be* *quhat* the *same* *came* in the *Erie* *Burgh* *Lodging* in the *Abbey*.

Item, Deposits, Yai upon the *Moyn* efter the *King* *Slaughter*, *viz.* *Munday*, *John Hepburn* of *Bowton* gait *one* *gray* *Hors*, *Mr.* *Young* of *Talo* *as* *brown* *Hors* *for* *my* *Lord* *Burgh*.

Item, Inquireit *quid* *William* *Galloway* *Deposition*, being *red* to the *Depositor*, *was* *truy*; *declares* the *same* *was* *all* *truy*, except the *Depositor* *remembers* *not* *quikils* *he* *had* and *countit*, *that* *God* *not* *to* be — on the *Gift* *yis* *Nicht* or *not*.

This is the *new* *Copy* of the *Depositions* of the said *William Powrie*, maid in *Presence* of the *Lords* of *Secret* *Concillie*, *concorded* and *agreed* with the *Principal* *remainand* at the *Office* of *Jud* *every*, *collationed* by me *Sir* *John* *Balcanquhall* of *Arbuthnot*, *Clark* of *our* *honorable* *Lords* *Judicium*, witnessing *my* *Sign* and *Subscription* *manu*.

Joannes Balcanquhall, Clericus Jussarius.

The Deposition of George Dalgleish.

Apud Edinburgum, 26 Junii, Ann. Dom. 1567, propositis et examinatis de Montean et Arbal, propositis de Dundee, et domus de Girange.

GEOFFREY DALGLEISH Seniores in the *Chalmers* to the Erie *Burgh*, of the *Age* of *37* *Zeins*, or yairin, *Er*. *Deposits*, Yai ye *Sunday* the *King* *was* *slayne* at *Nicht*: the Erie *Burgh*, accompanied with the *Laird* of *Ormiston* of yair *ilk*, *His* *Ormiston*, his *Father* *Brother*, *John Hepburn* of *Bowton*, and *seid* *Account* of the *Murder* of *King* *James* *Daughte* *even* *published*, and

bayeur mais elle ne pas vouloir au pair de la Maladye, chose que *Royce* en reconnaissance bien à plus (le dit-elle) vous dire à *Montf.* de *Bodol* que je ne vais jamais le Roy que *Royce* n'y est & voyait tout ce que je fais. *Ann.* La *Royne* lui dit, *Paris* ballez vous de revenir car je ne bougerai d'ici, jusqu'à un Temps que m'avez rapporté la *Religieuse*.

Etant led. *Paris* arrivé à *Lifsbury*, trouva led. de *Bodol* en son Logis à l'Abbay, lequel lui dit, *Ma Paris*, tu es le bien venu. *Montf.* dit il vous des Lettres que la *Royne* vous envoie & aussi à *Montf.* de *Lifsbury*, vous priant de les lui dévaler, & que je vous va parler ensemble pour vous rendre sages de faire & exécuter tout accordez ensemble, car bien dit il, car j'y ai couru jusqu'à la nuit, & la *Chambre* vous *Hagnum*. Le lendemain led. *Paris* dit qu'il vint au Logis de *Bodol* par trois fois le chercher, à 3, 4 & 5 heures & ne le trouva jamais, mais à la fin *Paris* le trouva lui dit qu'il était cherché, à la haute Ville que par aventure il le trouva, en quelque lieu & l'après cherché il peut venir un Troupe de Gens de vers le *Kirk* de *Fild*, la ou étoit led. *Sieur* de *Bodol* & *Montf.* *Jacques* *Balfour* chez la colle ensemble lesquels s'en allèrent dîner au Logis dudit *Montf.* *Jacques*. Led. *Paris* pria *Montf.* de *Bodol* de le despatcher vers la *Royne*, après dîner de lui le ferry, & quant il retourna qu'on le despatche après dîner il trouva le *Sieur* de *Bodol* led. *M.* *Jacques* lui dit, Telle est une *Chambre*, & led. *Sieur* de *Bodol* qui étoit de la propre *Montf.* & après avoir bu, il dit à *Paris*, voyez la *Religieuse* retourne l'en à la *Chambre*, & me reconduisez bien humblement à la bonne *Grâce*, & lui dit-elle que tout va bien, car *Montf.* *Jacques* *Balfour*, & moi nous avons donné toute la nuit, sans nous en aller en toute & nous appeler le Logis, & fins à la *Royne* que je lui envoie ce disant que tu lui porteras, & que je l'ai aussi mon Cœur je le jure enverrai très volontiers, mais je ne l'ai pas moi. Va t'en à *Montf.* de *Lifsbury*, & lui demandes s'il ne veut aller à la *Royne*, ce que led. *Paris* fit & le trouva à la *Chambre* des Comptes, & lui demanda s'il plaidait contre la *Religieuse* aux *Lettres* de la *Royne*, que de *Bodol* lui avait baillé. Oui [dit-il] & la dessus il prit du Papier nécessaire & écrivit, & quant fait, led. *Paris* lui dit que la *Royne* l'aurait commandé de lui demander lequel de deux Logis ferait le meilleur pour le Roy, car elle ne bougera de la jusqu'à ce qu'il l'aurait rapporté la *Religieuse* & led. *Lifsbury* lui répondit que le *Kirk* de *Fild* ferait bon, & led. *Sieur* de *Bodol* & lui avaient avisé ensemble la dessus. Alors led. *Paris* partit pour s'en à *Glasgow* vers la *Royne* & étant de retour à *Lifsbury* & avec lui son *Médail* qui lui eût donné dudit *Seig.* de brèche la *Royne* lui demanda, s'il avait vu parler *Montf.* de *Bodol* & *Lifsbury* ensemble dudit que non, mais que *Montf.* de *Bodol* lui avait dit qu'il se devait parler de bon *Village* ensemble, & que led. *Sieur* de *Lifsbury* étoit du tour à lui & que le Logis étoit prêt.

Ann. Comme elle retournoit de *Glasgow* vers *Lifsbury* avec le Roy & *Katharine* s'adressa au *Hecce* de *Montf.* *Bodol* aud. *Paris* & lui bailla une Lettre pour la présenter à la *Royne*, ce qu'il fit, laquelle lui demanda si l'Homme étoit sûr, je pense dit il Madame qu'il ne lui vaudrait pas envoyer un Homme qui ne fait sûr; la dessus en allant, elle relut une Lettre & y mit dedans un Anneau & la lui bailla, pour la bailla aud. *Homme* porter, chose qu'il fit, pour la rapporter aud. *Seig.* de *Bodol*. Après la *Royne* & le Roy étoient à *Lifsbury*, elle dit au *Paris* que elle voulait mettre *Gilbert* *Curt* Valet de *Chambre* chez le Roy pour ce qu'il étoit de bon *Esprit* à fin de voir ce qu'il feroit, car elle ne se feroit point à *Sando* *Darwin*. Dudit *Paris* *Jehan* *Hoy* par elle despatche vers *Montf.* de *Bodol*, auquel elle mit elle alors l'en, & après aussi *Paris* avecques deux *Brillollets* aud. *Sieur* *Bodol*. Led. *Paris* arrivant à *Lifsbury* lui bailla les *Brillollets*, lequel *Brillollet* eût à monter à Cheval pour à aller trouver le Roy & la *Royne*, avecques lequel led. *Paris* alla au devant le Roy, lequel ils conduisirent jusqu'à son Logis à *Kirk* & *Fild*.

Interrogé si il faisoit aucune prière entre la *Royne* & *Bodol* durant le Temps que le Roy étoit à *Kirk* & *Fild*. Répondit, que *Montf.* *Bodol* lui avait dit que toutes les nuits *Joan* *Hepburn* feroit le grand soula les *Galènes* à *Sando* *Darwin*, cependant que *Lady* *Katharine* étoit bien tard le querir pour l'amener à la *Chambre* de la *Royne*, lui déclinant aller à *Paris* fur la *Vir* de ne dire que la *Femme* étoit avecques lui.

Interrogé si faisoit de l'Entree de *meistre* du Roy depuis son Arrivement à *Kirk* & *Fild* jusqu'à un jour de l'Exécution. Répondit, que non autrement ce que qu'il en a déjà depose en la *Deposition* soude le 2^e de ce mois, en adjoutant que le jour que *Montf.* de *Bodol* lui avait commandé le fait de mourir du Roy qui fut le même jour que la *Royne* couchait au Logis du Roy à *Kirk* & *Fild* (ainsi comme il en souvenait bon bien) & comme led. *Paris* voulait dire le fait de la *Royne* en la *Chambre* qui étoit d'ordres sous la *Chambre* du Roy, après que *Montf.* de *Bodol* lui avait commandé l'en qu'il parle avecques lui au tour la ou il se défaisoit pour lui fin *Affaires*, led. *Sieur* de *Bodol* défendit aud. *Paris* de ne dire le fait de la *Royne* d'ordres sous le fait du Roy car je ne suis pas de dire le fait de la *Royne* en ce fait il ce me fait la sages que je fis au même en droit la ou il me fait défendre par led. de *Bodol*, la *Royne* me dit, Soit que tu es, je ne vaux pas que mon fils soit en ce fait & de fait le fait soit, par lesquels paroles j'y apperçus à mon *Esprit* qu'elle étoit Conscience du fait, la dessus, je pris la *Harde* de lui dire, Madame, *Montf.* de *Bodol* m'a commandé de lui porter les clefs de votre *Chambre* & qu'il a envie d'y faire quelque chose, c'est de faire faire le Roy en l'air, par *Posteur* que il y fera mettre, ne me parle point de cela & de la *honte*, en dit elle sans en ce que tu vois. La dessus je ne cessai parler plus avant: A ces paroles je commençai à confondre, que j'étais employé en ce fait méchant. Apprenant par paroles couvertes de desgrais, étant enveillé de *Glasgow* vers *Montf.* de *Bodol* pour bailler lequel des Logis étoient le meilleur, & par ce aussi qu'il me rendait alors quant il me renvoyait vers la *Royne*, vous la dites si elle vous demand ce que j'y fais que je veuille venir cette nuit & *Montf.* *Jacques* *Balfour* pour appeler le Logis du Roy.

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Etant interrogé, si la *Royne* passait plus entre elle & lui au *Kirk* & *Fild*, dit qu'elle n'en, mais le *Posteur* après plus fort que jamais, & par là elle du propos de *Montf.* de *Bodol* de la *Femme* & des autres choses & étant couché ne dormoit point toute la nuit, ainsi étoient des *Lettres* à *Montf.* de *Bodol* & les envoie par led. *Paris* au *Sieur* de *Bodol* en son l'ence à deux heures de nuit, mais rien de créance. Et ayant dévalé cette Lettre aud. *Paris* de *Bodol* lui refusa d'aller au fait, & ne baillait la *Religieuse* aud. *Paris*, il lui dit, donne à la *Royne* que je ne dormirai point que je ne sois avecques mon *Entree*, quant je déboursai trayer la *Pique* toute ma *Vir* pour l'Amour d'elle.

Etant de retour vers le Roy *Fendry* au *Matin*, lui ayant reconquis en même *Parole* que lui avoit donné *Montf.* de *Bodol*, & bien *Paris* ce dit elle (en tant) il n'en viendrait jamais si Dieu plait & ce point lui, & se dit-elle étant au fait. Et comme elle s'habillait led. *Paris* prend les deux clefs de la *Chambre* de la *Royne* selon de *Commandement* dudit *Montf.* de *Bodol* & les lui apporta, lequel ayant fait sortir tout le Monde de la *Chambre* prend la clef d'une Coffre qu'il avoit en la *Pechem*, & après avoir ouverte le dit Coffre entre des autres clefs confédérées sous seules en en regardant les autres après des autres, dit à *Paris*, tu as eues toutes bien, après celles là & il remette les confédérées dans la Coffre.

Etant interrogé, si l'écrouille qu'elle faisoit & baillait les clefs confédérées aud. *Sieur* de *Bodol*. Répondit, qu'elle n'en faisoit rien & ne dit. *Sieur* de *Bodol*, lui dit, qu'il avoit toutes les clefs dans la *Porte* de ce Logis là, & que lui & *Maître* *Jacques* *Balfour* avoient été toute une nuit pour chercher la *fenêtre* la meilleur *Entree*, comme il a déjà dit, mais cependant que led. *Paris* étoit absent avecques les clefs, *Archieve* *Balfour* *Hedder* demand les clefs, pour laisser entrer la *Royne* au *Matin* & ce point lui, & ne pouvant trouver la *Royne* en fait fautive & dit tout brutalement *Paris* à son amant, *Paris* pourquoy avez vous emporté les clefs de ma *Chambre*, lequel ne lui répondait mot sur l'heure, mais après la trouvant à part lui, lui Madame pourquoi m'avez vous ditte devant le Monde que j'ai pris les clefs de votre *Chambre*, voyant que vous faisois bien le *marquage*, & ba se ditte elle *Paris* c'est tout un: Ne te fâche, ne te fâche, & d'autant qu'il en pourroit avoir bon *Souvenance* comme il dit qu'il ce *Fendry*, la nuit la *Royne* coucha en son Logis du Roy, & lui renvoy à de seches paroles des *Lettres* au *Sieur* de *Bodol*.

Interrogé, si l'avoit rien entendu de ce propos le *Sunday* au *Matin*. Répondit, que non, ly n'en que la *Royne* dit en *Préface* de ce point de la *Chambre* qu'il y avait en quelque *Querelle* entre le Roy & *Montf.* de *Bodol* *Grav* lequel avoit bien moyen à cette heure la de voir le Roy car il n'y avait en la *Chambre* alors qu'elle pour les départir. Et dit outre, qu'après dîner led. *Sieur* de *Bodol* lui commanda de prendre la clef de la *Chambre* de la *Royne*, chose qu'il ne s'eût enve de faire, mais comme la *Royne* feroit de la *Chambre*, elle le regarda & lui commanda de prendre la clef. Et au fait la *Royne* étoit à l'Abbay elle envoie led. *Paris* vers *Montf.* de *Bodol*, lui commanda lui dire de bouche aller vous en à *Montf.* de *Bodol*, & lui dit-elle qu'il me semble qu'il feroit le mieux que *Montf.* de *St. Gravis*, avecques *Gilbert* *Maistre* aillent à la *Chambre* du Roy faire ce que led. de *Bodol* fait, & qu'il parle à *Montf.* de *St. Gravis* touchant ce *Purpos* car il feroit mieux ainsi qu'autrement; & pour ce ne feroit qu'un peu *Prisoner* dehors le *Château*; après avoir led. *Paris* reconquit ses clefs à *Montf.* de *Bodol*, il lui dit, je parlais à *Montf.* de *Santo* *Grav*, & puis j'ai tant parler avecques moi-même à la *Royne*. Led. *Paris* n'a pas de *Souvenance* d'ailleurs chose que ce soit ou point lui; mais elle dit content en la première *Deposition*, jusqu'à ce que par la *Royne* arriva en l'Abbay, & *Montf.* de *Bodol* s'étoit aussi retiré en la *Chambre*, avecques led. *Paris* s'arrivant *Montf.* de *Hoddy* en *Compagnie* de deux ou trois *Servants*, & ce par le chemin derrière l'Abbay, qui menait droit au Logis de son *Montf.* de *Bodol*; & après qu'il avoit passé en l'ouïe ensemble, comme *Montf.* de *Bodol* avoit déjà commencé de changer les *Habillures*, le dit *Bodol* dit après au dit *Paris*, que *Montf.* de *Hoddy* c'étoit effrayé d'aller avecques lui, mais qu'il ne le voyoit mentir, quant & lui, & après que *Montf.* de *Hoddy* ce fut partie pour aller coucher, led. de *Bodol* prit le *Tailor* & *Paris* avecques lui, comme il est dit en la première *Deposition* à cette *Marque* &c. Le *Lady* main entre aussi & dix heures led. *Paris* dit qu'il entra dans la *Chambre* de la *Royne* la quelle étoit bien close, & son fils tendu du tour, enve de *Dani*, & de la *Chandelle* allumée dedans la *ruelle*, ou *Madame* de *Briev* lui donna à déjeuner avec. Out là, ou aussi *Montf.* de *Bodol* survint & parla à elle *secretement* sous la *Couronne*. Ce jour la *Lady* ce passa aussi, sans le que led. *Paris* parla à elle *Mardy* au *Matin* elle le lea, & le dit *Paris* étoit avec en la *Chambre*, la *Royne* lui demanda (Paris qu'il n'y) *Hela* ce dit il je n'en que chacun me regarde de colle, ne te chaille, dit elle, je te ferai bon *Village*, *Peur* ne t'obéis de mort cependant, elle se luy dit chose de *Conséquence* jusqu'à ce qu'elle aille à *Sene*, alors, elle luy commanda de prendre une *Coffre* ou il y avait une *Chambre* & que le *Theatiner* luy avoit apporté de *Paris* pour la porter à la *Chambre* de *Montf.* de *Bodol*, qui étoit à cette heure la haute dedans le *Palais*, au dessus de la *Chambre* la ou étoit le *Coffre* & puis après lui commanda de prendre son *Coffre* des *Bagues*, & les faire porter au *Château*, & le dévaler entre le mains de *Sieur* de *Shirley* qui son *Capitaine* sous *Montf.* de *Bodol*, chose qu'il fit, en après elle voyant led. *Paris* tout enve, elle prit-elle feroit feroit de faire *Service* à *Montf.* de *Bodol*, ce qu'il n'avoit enve de faire ainsi demandant feroit son *Corps* & voyant cela, à la fin elle luy dit, *Paris* allez vous confier avec *Montf.* *Jacques* *Balfour*, & en avec *Homme* d'Esprit je moy ferois confier par plusieurs *Jours* & ne confie de *Paris*.

Ann. Interrogé du première *privauté* qu'il a cognoscue entre la *Royne* & *Montf.* de *Bodol*.

Répondit, que c'étoit alors que led. de *Bodol* conduisoit la *Royne* vers *Glasgow*, quant elle alloit querir le Roy à *Katharine* après souper avec led. *Lady* *Royce* vint à la *Chambre* de *Montf.* de *Bodol* & voya

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NUMBER IV.

The bringing Sir WALTER RALEIGH to Execution.*

SIR *Walter Raleigh*, by Virtue of His Majesty's Writ of *Habeas Corpus*, was brought to the King's Bench Bar, at *Windsor*, where he was proceeded against, as follows.

First, the Writ, delivered to the Judges by Sir *Walter Aspley*, was read, purporting, That whereas Sir *Walter* being long before, in the Presence of divers noble Personages, legally convicted of High-Treason, at *Windsor*, was then and there adjudged to be hanged, drawn, and quartered. After the reading of this Writ, *Adv. Attorney*, Mr. *Henry Yarranton*, spoke, in *Edith*, thus:

My Lords, Sir *Walter Raleigh*, the Prisoner at the Bar, was, Fifteen Years since, convicted of High-Treason, by him committed against the Person of His Majesty, and the State of this Kingdom, and then received the Judgment of Death, to be hang'd, drawn, and quarter'd: His Majesty, of his abundant Grace, hath been pleas'd to shew Mercy upon him till now, that Justice calls unto him for Execution.

Sir *Walter Raleigh* hath been a Statesman, and a Man, who, in Regard of his Parts and Quality, is to be pitied: He hath been as a Star, at which the World hath gaz'd; but Stars may fall, say, they must fall, when they trouble the Sphere wherein they abide. It is therefore His Majesty's Pleasure now to call for Execution of the former Judgment, and I now require Order for the same.

Then Mr. *Forbes*, Clerk of the Crown, read the Record of the Conviction and Judgment, and called to the Prisoner, so hold up his Hand, which he did. Then was the Prisoner asked, What he could say for himself, why Execution should not be awarded against him?

Sir *Walter Raleigh*, My Lords, my Voice is grown weak, by reason of my late Sickness, and an Ague, which I now have; for I was even now brought hither out of a.

Lord Chief Justice. Sir *Walter*, your Voice is audible enough.

Sir *Walter*. Then, My Lord, all that I can say is this; That the Judgment which I received to die is long since, I hope it cannot now be threatened to take away my Life: for that hence it was His Majesty's Pleasure to grant me a Commission to proceed in a Voyage beyond the Seas, wherein I had Power, as Marshal, on the Life and Death of others, to, under Favour, I profess I am discharged of that Judgment. First, by that Commission, I departed the Land, and undertook a Journey, to honour my Sovereign, and to enrich his Kingdom with Gold, of the Ore whereof this Hand hath found and taken in *Guiana*; but the Voyage, notwithstanding my Endeavour, had no other Success, but what was fatal to me, the Loss of my Son, and wasting of my whole Estate.

Being about to proceed, he was, by the Lord Chief Justice, interrupted, who spoke.

Lord Chief Justice. Sir *Walter Raleigh*, this which you now speak, touching your Voyage, is not to the Purpose, neither can your Commission any Way help you; by that you are not pardon'd, for by Words of a special Nature, in Case of Treason, you may be pardon'd, and not specially. There was no Word tending to Pardon in all your Commission, and therefore you must say something else to the Purpose; otherwise, we must proceed to give Execution.

Sir *Walter Raleigh*. If your Opinion be so, My Lord, I am satisfied, and so put myself on the Mercy of the King, who I know is gracious; and, under Favour, I must say I hope he will be pleas'd to take Consideration upon me. As concerning that Judgment which is so long past, and which, I think, here we come could witness, say, his Majesty was of Opinion, that I had had blame due thereon.

Lord Chief Justice. Sir *Walter Raleigh*, you must remember yourself; you had an honourable Trial, and so were justly convicted; and it were Wilful in you now to flatter yourself, and to confess your Offence did justly draw upon you that Judgment which was then pronounced against you; wherefore I pray you attend what I shall say unto you. I am here called to grant Execution upon the Judgment given your Fifteen Years since; at which Time you have been as a dead Man in the Law, and you shew at any Minute been cut off, but the King in Mercy spared you. You might think it heavy, if this were done in cold Blood, to call you to Execution, but it is not so; for new Offences have fired up his Majesty's Justice, to remember to revive what the Law hath formerly call upon you.

I know you have been valiant and wife, and I doubt not but you retain both these Virtues, for now you shall have Occasion to use them. Your Faith hath heretofore been questioned, but I am reforesaid you are a good Christian, for your Book, which is an admirable Work, doth testify as much. I would give you Counsel, but I know you can apply unto yourself far better than I am able to give you; yet will I, with the good Neighbour in the Gospel, who finding one in the Way, wounded and distressed, poured Oil into his Wounds, and refreshed him,

I give unto you the Oil of Comfort; though, in respect that I am a Minister of the Law, mixed with Vinegar. Sorrow will not comfort in some Kind: For, were you painful, Sorrow would not ease you; were you afflicted, Sorrow would not relieve you; were you tormented, Sorrow could not content you; and yet, the Sorrow for your Sin would be an everlasting Comfort to you. You must do as that valiant Captain did, who perceiving himself in Danger, said, in Defiance of Death, *Drink, thus earnestly not, but, merrily thy Spirit, I expect thee*. Fear not Death too much, nor fear not Death too little; not too much, lest you fall in your Slips; not too little, lest you die presumptuously. And here I will conclude with my Prayers to God for us, and that he would have Mercy on your Soul. And so the Lord Chief Justice ended with these Words, Execution is granted.

Sir *Walter Raleigh*. My Lord, I desire thus much Favour, that I may not be cut off suddenly; for I have something to do in Discharge of my Conscience, and something to satisfy his Majesty in, something to satisfy the World in, and I desire I may be heard at the Day of my Death. And here I take God to be my Judge, before whom I shall shortly appear, I was never disloyal to his Majesty, which I will justify where I shall not fear the Face of any King on Earth: And so I beseech you all to pray for me.

De Warranto speciali pro declaratione Walteri Raleigh, Mitici.

A.D. 1618. *Rex's* *JAMES*, by the Grace of God, King of England, Ireland, &c. *Raisonné*, France, and Ireland, Defender of the faith, &c. 17. *Faithe*, &c. To our right Trusty and Well-beloved Counsellor *Francis Lord Verulam*, our Chancellor of England, Greeting.

Whereas Sir *Walter Raleigh*, Knight, late of the Parish of Saint *Martin* in the Fields, in the County of *Middlesex*, with others, hath been indicted of divers High-Treasons by him committed against Us, and thereupon hath been tried, and found Guilty of the same, before our dear Counsellors and Counsellors, *Thomas Earle of Suffolk*, then Chamberlain of Our Household,

Colinet late Earle of Straburgh, *Charles late Earle of Devon*, *Henry Lord Hunsard*,

Robert Lord Croll, of *Essex*, then Our Principal Secretary, *Edward Lord Writton*, then Our Controllor of our Household,

And other our Justices of Oyer and Terminer, at our City of *Windsor*, in our County of *Southampton*, concerning Treasons, and other Offences, lately assigned; which said Sir *Walter Raleigh* was, for the same his Treasons, by them adjudged to be drawn, hanged, and quartered, according to the Lawes and Customs of this our Realm of England, in that Case provided; which said Commission, with the said Judgment, Indictment, and the Tryall and Proceedings thereupon, were read, and doe remayne in our said Court of Pleas, before Us to be heard; and although the said Sir *Walter Raleigh* be adjudged to die as aforesaid; yet We, minding to dispence with that Manner of Execution of Judgment, doe therefore, by their Privileges, pardon, remit, and release the said Sir *Walter Raleigh*, of and from such Execution of his Judgment to be drawn, hanged, and quartered, as aforesaid, and instead thereof, our Pleasure is to have the Head only of the said Sir *Walter Raleigh* cut off, at, or within our Palace of *Windsor*, in, or upon some fit and convenient Place, or Sea-side, to be provided in that Behalf, and that in such Sort, and Order, as in such Case have been heretofore done; the said Judgment to be drawn, hanged, and quartered, or any Law, or other Thing, or Matter whatsoever, to the contrary notwithstanding: Willing charging, and hereby expressly commanding our said Chancellor, That, upon Receipt hereof, you do forthwith direct, under our Great Seal of England, Two several Writs, one to the Lieutenant of our Tower of London, or his Deputy there, for the Delivery of the said *Walter Raleigh* to the Sheriff of *Middlesex*, at, or within our said Palace of *Windsor* aforesaid; and another Writ to the said Sheriff of *Middlesex*, for the receiving of the said Sir *Walter Raleigh* of and from the Hands of our said Lieutenant, or his Deputy, and for the executing of him there, at some fit and convenient Place, to be then, by our said Sheriff, certified and provided for that Purpose, as in such Manner and Form as in such Case hath heretofore been done, or to be done; and their Privileges shall be your Warrant and Discharge for the same, against us, our Heirs and Successors for ever.

Witness Our Self, at Westminster, the Eight-and-twentieth Day of October.

Per Breve de Privato Sigillo.

* People have often wondered how an old Sentence, that had lain dormant so long, could have been put in Execution; especially, as Sir *Walter*, by the King's Patent, had Power of Life and Death over the King's Subjects: And as what is printed in Vol. 2. pag. 219. is a very short and imperfect Account of the Proceedings against that Great Man, before Sentence, we hope the Account which we have procured from authentic MSS. will be acceptable; together with the Warrant of the Execution, from *Rex's* *Indorse*.

Compass of this Law, in regard of the manner of Trial, but such only who are excepted out of it by special Privilege. Now Irish Peers are none of these Peers excepted, and I shall prove anon.

That these Words, *any Peer or Peers*, extend to Peers as well as Commons, where there is no Exception of Peers, is undeniable.

First, because a Peer is a Peer, though of a higher Rank or Degree than an ordinary Commoner, or Freeman, and one kind of Peer is a Law, therefore it is thus these Words, *any Peer or Peers*.

Secondly, because general Laws, made for the common Good, Safety of the Realm, and Punishment of the great Crime of High Treason, are like to God himself (c), no Respecters of Persons, but bind and punish all alike. Therefore *any Peer or Peers*, in such a publick Law as this, made for the common Good, Safety, and Punishment of the greatest Treasons, Exits, must necessarily include all Peers, Subjects, which rank, and except none, especially the greatest, whole Examples and Officers in all publick Acts whatsoever, these Words, *any Peer or Peers*, extend to Peers as well as Commons, and I know no one Precedent to the contrary.

To instance some few Acts, instead of many. In the Statutes of 26 H. VIII. c. 13, and 5 E. VI. c. 11, concerning Treason, *any Peer or Peers*, or of the King's Subjects, *Deniers*, or *others*, that shall commit or practise Treason out of the Limits of this Realm, as any outward Peer, extend to Peers as well as Commons, therefore, in this Act of the same Nature. So in the Statutes of 1 Ed. VI. c. 1, 2, and 3 E. VI. c. 1, 2, and 6 E. VI. c. 1, 2, and 2 Ed. c. 2, if *any Peer or Peers* shall depose or revoke the most blessed Sacrament, or the Oath of the Common Prayer, &c. In the Statute of 1 Ed. cap. 1, and also of 5 Ed. cap. 1, if *any Peer or Peers*, Sec. shall commit, Sec. also Power to the Bishop of Rome, or his Legate, &c. In the Statute of 1 Ed. VI. c. 1, 2, and 3 E. VI. c. 1, 2, and 6 E. VI. c. 1, 2, and 2 Ed. c. 2, if *any Peer or Peers* shall be in, or put in any Jail from the Bishop of Rome, Agnus Dei, Pelicans, &c. In the Statute of 23 Ed. c. 2, if *any Peer or Peers* shall with a malicious Intent, seek any false or fictitious News of the Queen, &c. In 23 Ed. c. 2, if *any Peer or Peers* shall be in, or commit any Mischance in the Maintenance of any Justice, Prebend, &c. In all these Acts (so numerous (d) many others), the Words, *any Peer or Peers*, extend to Peers as well as Commons, as is referred in the Bodies and Provisions of all these Acts: Yea, in the Statute of 25 E. III. c. 2, of Treasons (though a small Penal Law), the Words are only, *if a Man do treason or attempt the Death of the King, if a Man do lay or attempt to lay on his Realm, Sec.* If a Man move against the King's Honour or Privilege, or his Money, Sec. Yet it hath been rehearsed without Dispute in all Times, and so signed by Sir Edward Coke, Justice 3. p. 45. 5. that this Word, *a Man*, extends to both Sexes alike, including Women as well as Men, Peers as well as Commons, Lords as well as Peasants; yea, all Ranks, Callings, Conditions of Men who are subjects; and that this Word *Man*, in the singular Number only, extends to many Men, to any Number of Men committing any of these Treasons jointly, as well as to a single Man, or Traitor, because it is a general Law, made for the Safety of the King's Person, and the Realm.

Most note then must *any Peer or Peers*, in this Statute, being both in the singular and plural Number (to be understood by these Words, *a Man*, in 25 E. III. c. 2, extend equally to single Men, Sexes, and Degrees of Men, as well as to, and to Peers as much as to, and to Peers as well as to Commons, as it doth in the Statute of 25 H. VIII. c. 22, 26 H. VIII. c. 13, 27 H. VIII. c. 3, 33 H. VIII. c. 12, and 30. 5 E. VI. c. 13, 1 Mar. c. 6, and 2 Phil. 5 Mar. c. 9, 10, 11, 5 Ed. c. 1, 13 Ed. c. 2, 18 Ed. c. 1, 23 Ed. c. 1, 37 Ed. c. 2, 3 Jac. c. 4, concerning Treasons.

Secondly, My second Argument to prove Irish Peers within this Statute, is, because Irish Commons are within its verge, even when Treasons committed in Ireland, as hath been adjudged in the fore-cited Cases of *Ormond*, *Sir John Davis*, and *Mr. Malone*. For Laws and Law-givers being no Respecters of Persons, where the Offences be the same, and there being no Clause, Word, or Syllable in this Statute extending to Irish Commons Treasons, but which death, may, and ought, by the full-borne Justice, Reason, and Equity, to extend to the Treasons of Irish Peers, (this Statute making no Distinction between the one and the other) and the Commons of Ireland having as absolute a Right and Liberties in their native Privilege of being tried by their Peers in Ireland (which yet is taken away by this Act in Case of Treason), as the

Peers of England, we cannot, when the Law itself makes no Distinction. Therefore, since the Irish Commons are undoubtedly within the Words and Scope of this Act, to be tried at this Bar by a *Middlesex* Jury, the Irish Peers (which we will judge with Respect of Persons, and not a Distinction not warranted by this Act) must be also tried in the like-borne Manner. The Law is the same, the Crime is the same, both in *Malone's* and in *Mr. Malone's* Cases; therefore the Trial, and Judgment too, must, in Law and Reason, be the same in both.

Thirdly, it will be granted me, without Dispute, That if as Irish Peers commit Treason in any Foreign Parts, out of England and Ireland, as in Spain, France, Flanders, Italy or Germany, he shall be tried in this Court by an ordinary Jury. Nay, if he commit Treason in Ireland, and fly into England, he may, and shall be tried for that way Treason, by an ordinary Jury, at this Bar (e); because by flying his Country, and a legal Trial there, he hath ousted himself of the Benefit of his Peers. Therefore it extends to Irish Peers, even for Treasons done in Ireland, else they could not be triable here in any of these Cases, which are granted on all Hands to be Law.

Fourthly, It is evident by the Preamble in this Act, that English Peers committing any manner of Treason out of this Realm, are triable for it in England, by virtue of this Law, as well as English Commons, though they were not so by the Common Law. Therefore Irish Peers committing Treason shall be triable in likewise, and it is triable here as well as Irish Commons, else they should be in far better Condition than English or Scotch Peers, and quite exempted out of this Act. Now the same Words that bring English Peers within this Law, need of No further hook in Irish Peers, or, those being no Clause which excludes or includes the one more than the other.

Fifthly, The very Letter, Intent, and Scope of this Act (as appears by the Body of it, and likewise by the Statutes of 26 H. VIII. c. 13, and 5 E. VI. c. 12, to the same Effect) was, to make all Treasons done or committed out of England, by any Person or Persons whatsoever, triable in England, either before the Justices in this Court, or (d) before special Commissioners in some other Counties; but to be triable within this Realm, as the Words (d) *any manner of Treason hereafter to be done, perpetrated, or committed by any Person or Persons out of the Realm of England, shall be deemed to be committed, of, done, and determined before the King's Justices of the Bench, Sec.* clearly intreat in direct Terms: Therefore to make the Treasons of Irish Peers committed in Ireland, or elsewhere, triable here in England, as well as the Treasons of English Peers, or Irish Commons. And to send them back *into Ireland*, to be there tried by their Peers, when once they are here in Prison, and indicted in this Court, by exempting them out of this Act, contrary to the very Letter and Intent of the Law, is to run Post-black against the very Word and Meaning of this Law, and the Law-makers: Therefore be it, by this Act, be tried at this Bar, and that by an ordinary Jury only, as I shall prove anon.

Sixthly, The very Scope and sole Purpose of this Act is not to make new Treasons, or Treasons, which were not before, but to bring real Treason only, the Treasons (formerly made, or hereafter to be made and declared Treasons by the Laws and Statutes of this Realm, to exemplary Punishment in this Kingdom, for the Peace and Preservation of the King, Realm, and the better Execution of Justice (the very Life of Law) upon Delinquents out of the highest Rank, for the most transgressive Crimes of High Treasons, or Misdemeanors, or Corruptions of Treasons, not for Felonies, or Petit Treasons, which Consistencies must necessarily induce us, for the common Good, to put it in the largest, fullest, and most equitable Construction that may be.

That the Judges, in former Times, have always interpreted it, as appears by Dyer, f. 123, 258, Coke's 2d. Inst. c. 6, f. 23, and his 3d. Institut. on Litchin, f. 25, his 3d. Institut. p. 24, and in *Ormond's Case*, wherein the Judges resolved, First, That the Statute of 1 Mar. 2d. 1, repealing all former Treasons, has those within 25 E. III. and of 1 Mar. 2d. 1, and 2d. Mar. c. 10, enacting, That all Treasons hereafter to be done for any Treason, shall be held and adjudged only according to the due Course of the Common Law of this Realm, and not otherwise, extends not to the taking away of foreign Treason, by their Trials, by this Law. And in *Ormond's Case*, they extended it by Equity beyond, and in last sort, against the Letter of the Law itself, for by Building issue, and refusing his Trial, was there upon condemned and executed for a Treason committed by him in Ireland, though the Words of the Statute are, *The Treason shall be enquired of, heard, and determined before the Justices of the King's Bench, by grand and lawful Men of the Court there, when the Just Bench shall sit*; and the Act speaks nothing at all of Building issue. But this being a publick Law for the common Good, to bring Traitors only to their Trial and just Punishment, his Refusal to put himself upon his Trial, was adjudged to be a Determination and Conviction of his Treason within the Act, else any Traitor, by flouting issue, might evade and frustrate this good Law. If then this Statute may thus be construed by Equity, and extend beyond the Words, in out who has made issue, let a Traitor done in Ireland; much more may he be convicted on a Traitor by an Irish Peer, as I shall within the Words and Intent of it, as I have already manifested: And it would be a most pernicious Gloze which should either close or nullify this beneficial publick Law.

Seventhly, It is clearly rehearsed in and by our Parliaments, 1 E. I. Proem. 13 E. I. of Statute Merchants, 24 E. III. 1st. Parl. a. 67, in the Statute of 5 H. V. ch. 6, and in divers of our Laws, (e) *That Acts of Parliament made in England, whereas Ireland is also specially named, or generally and necessarily included, do and shall be binding, as Commons or Peers alike*. This therefore being such a Law, extending to and binding those in Ireland, as hath been rehearsed in the fore-cited Cases, it must certainly bind both the Peers and Commons of Ireland to a Trial at this Bar, for Treasons done in Ireland, when the King and Kingdom deem it necessary or expedient to try them here in England.

Eighthly, The Preamble in this Act for Trial of Treasons done out of this Realm, by Peers within the same, extends only in positive Terms to Peers of this Realm of England, because they only are Peers within England, and is only triable by their Peers, for foreign Treasons within the same; not to Peers of Ireland, who are no Peers, as I shall, nor triable by their Peers within this Realm of England; therefore this Preamble extending only to Peers of this Realm, excludes all other foreign Peers, whether Irish or Scots, from any Trial by their Peers in England, for Treasons acted out of it.

Ninthly, There is very great Reason why natural Irish Peers and Bishops should be within the Compass of this Law as well as Commons, and rather than any other foreign Peers, because, as our (f) Historians, the Irish Annals, Statutes, and our Records do tell us, ever since their Conquest by King Henry the Second, and Submission to the Kings of England, they have frequently (almost every Year) in small Kings,

(c) 2d. Inst. c. 6, 1. Rom. 6. 11. 2d. Inst. c. 6, 1. 2d. Inst. c. 6, 1. 2d. Inst. c. 6, 1.

(d) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(e) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(f) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(g) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(h) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

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(l) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(m) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(n) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(c) 2d. Inst. c. 6, 1. Rom. 6. 11. 2d. Inst. c. 6, 1. 2d. Inst. c. 6, 1.

(d) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(e) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

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(g) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(h) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(i) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(j) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(k) See 13 E. I. c. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,

NUMBER VI.

The Dying Speech of Mr. Peter Vowell (a), executed July 10, 1654.

Gentlemen,

AT this casualty Day, from them that pretend to have a great Measure of Sanctity, I had but Measure: But to that Bar I am now going, the Bar of Heaven, where I shall have Justice, yes, one Day Justice against them, except they water their Beds and Couches with Tears and Repentance.

The Court gave severe and rash Judgment on my Body; and sent a pious Fellow (but pitiable) that gave a Judgment on my soul: that that precious Jewell none of them could touch to hurt. The Souls under the Altar cried for Vengeance, Lord, long ago: How many more of late Years have been added to them to help the Cry! The Cry is loud of these lately, whose Blood hath been unlawfully spilt. But Vengeance is God's, and I will leave it to him.

The Court at my Trial said I was confident, and held it as a Fault. He also whom they sent to the Tower (I know not of to stay me) under pretence to comfort my Soul, told me also I was confident. I say the same, and the same Confidence bring with me now, and by God's Assistance, I hope, shall carry me out of this World with my Innocence.

Gentlemen, I believe, Amongst the sweetest and most savage sort of Heavens they laid a Law, one every three, six, or twelve Months, to offer up a Sacrificed human Blood to their God; and that their God was a Devil. Ask me of it, whether Heavens or not you build know, of late Years, we have had a fatal Custom, once in three, six, or twelve Months, to make not only a Sacrifice, but many Sacrifices of human (human Blood! Our dearth hath reeked and smoked with so choicest Sort of Blood; but unto what God, do you judge. What God is he that dights in the Blood of a Man? Alas, the God of Abrahams, Beelshazars, the God of Fools.

Amongst the Primitive Christians, that lived nearest the Time of our Saviour Christ, the greatest Tyrants and Persecutors of the Christians lived. The Persecution was great, and yet the Courage of these persecuted Christians was great, that it exceeded the Joy of the Persecutors; that they came in faster to be killed, than they could kill: They offered their Bodies and Throats to stick unto the slaughter, that the Hands of the Tyrants were weary with killing, and yet *Sanguis Martyrum est Semen Christianum*: And many Heavens came in with the Christians, and died Christians, and died with them; the Christians still increased the more.

Of late Years there hath been a great Persecution in this Nation; and yet our Differences have been so many, and preferred themselves so thick, in the Visitation of their King, Country, and Laws, that they flattered the very Enemy himself, their Conscience to great, that the Eyes of their Judges dream Toss; whether or no, or true, let the Judge of Judges Judge: They still thus smothered in their Conscience; though they exceed the old Heavens, are not weary of killing.

Oh Soldiers! how many of you have been brought up, and led on by blind Principles, wrapped in your Education, or seduced by your indifferent, headless, and hasty Teachers? How many of you, young, have for loose small Discontent departed from your loving Mothers, dear Friends, or tender Parents, and fled into the Army? How many of you driven by tyrannous Oppression, Poverty, or Cruelty, have left your dear Wives and Children? And some for Novelty or Wantonness adhered to this Employment, not considering the great Danger of spilling innocent Blood. How many of you have drawn your Swords, you do not know for what? How many of you keep drawn your Swords, you do not know for what?

You have put to death a pious and just King; and in his blood have reaped up even another Jerusalem, that makes itself to sin: What his Guiltless it, you best know.

You have put down a good old Law, and raised up another of your own to judge the People by. For my calling for the Benefit of the poor, and for the Equity even of your own Law, I am in part condemned here to die. Be you Judge of the Proceedings.

How many of you have had a hand in pulling down the ancient true Church, and raised up in your own Imaginations a new one? But, alas! you know not what you do: If you did, you would grieve to see what a glorious Church you have raised; you would never have pulled up the Rodgers, and broken down the Fences, that the wild Beasts of the Forests should come in; that the little Fowls should devour, and the wild Boar root out so fitly a Vine.

When the Jews were led into Captivity, their goodly and magnificent Temple was burnt: But in process of Time they obtained Favour amongst the Heathen Kings they dwelt amongst, and had Liberty wherewith to rebuild. Rebuild they did, and finished a Second Temple; at which Sight all the young Men rejoiced, to see so gallant a Temple, but the old Men wept, to see how far different and short the Second Temple was from the Glory of the First. So you, young Men, rejoice at your magnificent Church; but the old Men, methinks I see some weep. Oh! weep not so me! weep for your Country! weep to see Religion, Liberty, and Laws taken from you! weep to see so many good Men scratched away, but indeed from the Miserics to come! and weep for what Miserics you unhappy selves will suffer!

Soldiers, However you flourish for a time, and perhaps many of you may rejoice at our Deaths, believe it, as *Sangis* pulled the Heads of the *Pharisees* down, when he fell; so shall we give you and your Cause a greater Blow by our Deaths, that living we possibly could have done. You may for a time flourish; but remember what our Saviour said: 'All that take up the Sword, shall perish by the Sword.' You shall be cut down like the Grass, and wither away like the green Herbs.

But do you behold yonder glorious Place! Do you behold the spangled Heavens, where the holy Angels dwell, where God himself is surrounded with Thrones, Principals, Powers, and the celestial Spirits of just Men? When the Trump shall blow, when the Dead shall rise at the dreadful Day of Judgment, how will you answer all your Rages and Murders? Do you think that your Hands, which have been bathed in the Blood of your King, the Blood of so many of your eminent Countrymen, so unjustly; that have been bathed in the Blood of many of your Friends, your Kindred, perhaps your Parents, ever reach yonder glorious Place, without Repentance? Oh! no. Repent now, therefore, it is not too late: Shake off your bloody Precious; release your unkind Laws; and call in your Royal young Prince, whom you have long enough wronged. Make your Addresses to the great Protector of Heaven and Earth; and desire him, as I now do for myself, for a Pardon, for a Pardon for all your former and present Transgressions.

I die an obedient Son of the Church of England, and with a dutiful Heart to the King, and desire that zone present that loves them would be dissuaded by my Death, but continue faithful to the End.

And so farewell, I forgive all the World.

NUMBER VII.

A true and impartial Relation of the Death (and Dying Speech) of Mr. John Gerard, who was beheaded on Tower-Hill, July 10, 1654 (b).

[Published by his Friends.]

IT was thought needful by the Friends of Mr. Gerard, to declare any thing concerning his Sufferings to the World more than in their Sight, but the benevolent Malice of the last weekly Pamphlet thrown some brains upon his Name, and so incited them to a Visitation as proud as his Death was. 'Tis most certain, that there can no Blood stick upon true Honour, which such weak Fools endeavour against it: There are cursed Beasts, but their Honors are short; legual-cour Dogs, that creep up Graves, and violate the Dead, and are fierce and ravenous; but yet Dogs still. And all worthy People will call their Raile, Praise, and what they intend a barking Infamy, the growling Merit. Yet because every Understanding is out of the Lane, Brightest, and their proud Libels may, by ill Chance, fall into some innocent Hand besides (and yet few such Vermin should be endured long), therefore let wise and good Men pardon him that hath undertaken this Justice for that Gentleman, and be pleased to read this Del Story, not for their Satisfaction sake, but their Sorrows: To may dry up a friendly Tear, perhaps, and still a murmuring Groom, to fix the comely Profile of his Puffins, how well all was carried by him, and how honourably; and the

honest Circumstances may not reproachfully take off from the Sadness. Why should I grieve that Death which had such a living Glory in it, or discommend that Blood with feeble Tears, which was shed like the holy Martyrs? All that knew this Person, cannot but witness his general Resolution, and whether his great Courage fell less than itself (as the Viper's doth), or did not rather rise greater now, when the Christian was twined with the Gentileman, let this faithful Relation witness: In which, though all Terms and Syllables may not be exactly the same, yet if there be a maternal Falshood, or a wilful Flattery, may his Neck that wrote it feel a viler Dainty than Axes are, or Halberds. *Amicus Gerardus, sed magis Amicus Patria.*

From the first Day of his Imprisonment he showed the heavy Sentence hovering upon him, and therefore gave all Diligence to secure himself against it, that however he underwent a temporal Contumacious, he might escape an eternal. But after that God's Doom was pronounced, then he bestowed himself unshaken, and made double Haile for Heaven: It was for his Life, and therefore he would be no Murmur, but the same Night gave Directions to a dear Friend for a Minister (whom he knew to have long honoured his Family) to be

(a) From the MS. of Dr. Richard Doake, late Chancellor of Exeter.—This Speech should follow his Trial, in Vol. II. P. 212 to 213.
(b) This Relation and Speech should follow his Trial, Vol. II. P. 212 to 213.

" I fear be lost his Kingdom by such Practices; but whether it would recover them so, is a Question: God hath better Ways, when it shall be good in his Sight to plead his Cause.

" I was lately in France, but on mine own Score; for I have commanded there, and probably might again.

" For my past Life, it hath been but a troublesome one, but now I hope I shall rest! Since I was any thing, I have served the King, as I was bound; and I wish all that did to have done it as faithfully: He was condemned for a Tyrant, but God—

" For my Religion, though a Soldier, I am able to profess I am a Christian Soldier, a true Son of the Church of England, as constituted under Queen Elizabeth, King James, and King Charles, of blessed Memory: Her Doctrine and Government I embrace, her Truth and Peace I pray God to restore.

" I humbly give Thanks to God Almighty, for providing me the Comfort of a Minister, on whose Fidelity I might repose my Soul.

" And I pray God to bless the poor faithful Ministers of this Church, and give you Hearts to cherish them; the Want whereof is no small Cause of our Misery.

" My Days have been few and evil, yet, God be blessed, in all the Vanities and Folly of Youth, I have been far from Atheism, or Contempt of God's Worship; I had always awful Impositions of God's Honour and Service, which is now my Comfort.

" And now, dear Countrymen, fare you well! I pray God bless you all, and this whole Nation.

" Alas, poor England! When will these black Days be over? When will there be blood enough? I wish mine may fill up the Measure.—

" I forgive all.

" Christ more, fare you well! Commend me to all my Friends, pray for me.

" I pray God make you as faithful and loyal as I have lived, and as happy as I shall be by-and-by, when I am dead.

" Come, Lord Jesus! come quickly!

" Father of Mercies, have Mercy on me!

" Saviour of the World, Love my Soul!

" O Lamb of God, that takes away the Sin of the World, hear my Prayers!

" Into thy Hands, O Lord, I commend my Spirit!

" Lord Jesus! receive my Soul!"

NUMBER . VIII.

The Trials, Behaviour, and Dying Speeches of Col. Okey, Col. Barkstead, and Miles Corbet, Esq.
April, 1662^d.

[Published by their Friends.]

C^{OL}ONEL Okey, Colonel Barkstead, and Miles Corbet, Esquire, being involved in one and the same Danger, did, since the King's coming in, thrust themselves for Malice, after many great Difficulties and Hazards. Two of them, viz. Col. Barkstead, and Col. Okey, after a short Stay in Holland, travelled up higher into the Country, and at length settled themselves at a Town called Hove, in High Germany, where, by their good Carriage and obliging Conversation, they obtained the Favour and Privilege to be enrolled Free Burgers of the said Town. They continued there for many Months, in good Esteem with the Inhabitants, and with great Endeavour Affections to each other, some urgent Occasions pressing Col. Barkstead to return for Holland, Col. Okey, out of mere Kindness and Respect to his Friend, resolved to accompany him; and in both of them took their fifth Consistory for Holland; having before received Encouragement to undertake the Voyage, from a Friend, whom they had employed to solicit the States General, that they might abide for a short Time within their Jurisdiction, un molested, to which, as their Friend informed them, they did most freely and willingly consented. Another also was more particularly engaged by Col. Okey, to accompany Sir George Downing (the King's Resident now in Holland), with their intention of coming (speedily into that Country in case they might, for a few Days, remain there in Safety, and that he had so Credit from the King his Master to secure them. Sir George did assure that Gentleman, that he had no Order from the King to apprehend or molest them; but that they might be as free and safe there as himself. Upon this last Encouragement they did very much depend, Col. Okey especially being confident that Sir George Downing had a particular Kindness for him, who gave him his first Breach in England. This generous and plausible Colonel (who took a Measure of all Men by himself) did, without the least Reflection, suppose a great deal of Trust and Confidence in one whom he had been instrumental to raise from the Dull. They had not been long in Holland, before their Occasions called them to Delft, whereto the famous knight had timely Notice by one of his Spies, employed for that Purpose, and having in Readiness a Warrant from the States General for the taking of them, the Knight, and his ruffian Crew, without the least Shade of Humanity or Honour, having certain Knowledge of their Arrival at Delft, did, the very same Night, proceed upon their Design, and took them at their Lodging, together with Mr. Corbet, who, upon Notice had that they were in Town, went only to give them a Visit, and it being late, was even ready to take his Leave of them. When they were all three thus seized, immediately they were hurried to Prison, and by the Procurement of Sir George Downing, were most basely used, having Shackles and Fetters put upon them, and he called into a nasty, smelly, and dark Dungeon, having nothing else but the damp Earth to repose upon, and there continued in Prison, all two of the Clock the next Day, in a very bad Condition; but afterwards, being treated a little more like Men, some of the States came to them into the Prison, bringing one of their chief Ministers with them, and between examining of them, and discoursing with them concerning the Fact for which they were seized, and the Cause in which they were formerly engaged in England, wherein Col. Barkstead especially gave them such Satisfaction, that all of them, and particularly the Minister, when they took their Leaves of them, seemed to have a better Opinion both of their Persons and their Cause, than they had before; and did without give them Assurance, that they should be delivered up, to be sent for England, until they had had a more publick Hearing of what they could say in their own Defence. But by the extreme Obstinacy of Sir George Downing, and his continued Solicitations, accompanied (as is reported) with strange Menaces, these Persons were soon after, (not only contrary to the particular Engagements of the Lords before-mentioned, but also against the very Laws of Nations, and of all human Society and Commerce, yet, against their own former Practices, in the Case of *Restitus*, who murdered the King of France,) by Order from the States General, at two of the Clock in the Morning, taken out of Prison, and being manacled with Wrist-Irons, Chains, and Locks, were thrust into a Vessel lying at

Delft, and from thence conveyed into one of the King of England's Frigates, provided for the Purpose, and so in a few Days were brought for England. When they arrived at the Tower of London, they were forthwith disposed of, by Order of the Lieutenant, to their several Prison-Lodgings; and there continued until the Sixteenth of April, 1662, upon which Day they were carried up by Water to the King's Bench Bar, to receive Judgment, having been already, by Act of Parliament, attainted of High-Treason, for compassing the Death of the late King Charles the First. After a very short Debate, whether the Prisoners at the Bar were the Persons named in the forementioned Act of Attainder, yea or no? Witnesses being produced, who made full Proof in the Affirmative, and the Prisoners themselves confessing it, the Jury, without going from the Bar, gave in their Verdict, that they were the Persons named in the said Act, wherupon Judgment was given against them accordingly. After Sentence was given, they were ascended back to the Tower.

Colonel BARKSTEAD'S Behaviour.

THE Morning of his Execution being far spent in discoursing with his Friends, the Sledge, about eight of the Clock came into the Tower, which making a great Noise upon the Stones, he ran to the Window with a smiling Countenance to view them, and said, *Oh! our Christi-ans were new!* A little while after the Sledge came, the Gentleman Porter, or some other Officer in the Tower, came to acquaint him with it, desiring him to prepare for his Departure; to which he rejoicfully answered, That blessed be God, it was not then to do; and so, with much Cheerfulness, he committed his Wife into the Hands of the Lord God Almighty, relying upon his Promise, That he will be a Father to the Fatherless, and a Husband to the Widow. A little before his Departure, he desired his Wife to button on his Clock, which accordingly she did, and presently the Gentleman-Jailer, and a File of Soldiers came, by his Lieutenant's Order, and secured him; at which Time he parted with his Wife and Relations, as himself professed, with as much Joy as ever he received them. Now being brought by the Jailer to the Lieutenant's Door, that being the Place appointed for the Sledge to receive them; and although it was the Place and House on which he lived in Plenty and Honour, yet he had so much changed himself unto it, that he did not so much as call his Eye open at it; so no Wonder, if his Treasures were in Heaven, that his Heart was there also. He was appointed the first that should enter the Sledge, and so to be drawn the foremost of the three through the City. Having thus entered the Sledge, he sat down, and looking about him with a cheerful Countenance, and speaking comfortably Words to such Friends as went near him, after a while, the Sledges were ordered to be drawn away, which accordingly was performed; and coming down the Church-Hill, opposite to his Prison, (after his Palace), his Wife, with some other Friends, standing at the Window, took her Handkerchief out of her Pocket, and flung it at him, which he perceiving, took off his Hat, and several Times shaking it over his Head, cried out with an astonishing Cheerfulness, *To Heaven, to Heaven, to Heaven, my Love, and welcome to the Sun!* Thus riding along, he came to the Tower-Gate, where some reviled him in Words and Carriages, not only his Enemies, but his former intimate Friends, which he rather smiled than was troubled at. Near Hallowe there came a young Woman to him, being very earnest to speak to him, which the Officers permitted; all that she told him he had to say to him was this, That whosoever he did, he begged of him to go on cheerfully in so glorious a Cause. Several spoke to him in the same Manner. And though he met with some Revilers in the Way, yet the Number of his Friends, and of such as blessed him, and the rest in the Name of the Lord, far exceeded them. As he passed along, several Times, a Friend that accompanied him, asked him how he did? Who told him, He was now better in all his Life, and that he grew stronger and stronger every Moment. And going up Hallowe, being in Discourse with the same Friend, who, with a smiling Countenance, told him, That he evidently saw Jesus Christ coming down

* This should follow the Trials and Speeches of the Regicides, Vol. II. p. 413.

left to be an Incongruity, an Inconvenience, *une Nécessité*, (as was in the Case of Sir *John Rolfe*) all which were pre-occupied in an Issue in Law, as their Lordships well knew, so that there was a Confusion without Prejudice: Yet if it should please the Judges to over-rule it, he was contented (carrying himself with much Reverence and Respect unto the Court).

To which either the Attorney General, or some other, replied, That Mr. *Corbet* said Truth, as to ordinary Proceedings, but here it was extraordinary, viz. by Act of Parliament as a Bill of Attainder; and then cited a Book Cal'd *one Sargant*, who was thus proceeded against, detained and executed in *Henry the Fifth's* Time. To which Mr. *Corbet* replied again, he had nothing to say to that, but what the Authority of the Nation had made Law, he must submit to; and did acknowledge, as Things stood, they did proceed according to the Rules given them, and in that respect did what was just, according to the perfect Law. *But did you not say the Fall, faith one, by your own Flight?* It being a known Maxim, *Non facis fortis sceleris formam*. To which Col. *Barkhead* answered, That he, for his Part, felt for fear of an Arrêt, threaten'd against him for Twenty Thousand Pounds for having said a Impertinent. Mr. *Corbet* said, That he, for his Part, did not fear for Twelve Years together after the *Fall* done, and that any body who had a Mind to it, might easily have tried him, it being well known where he was all that time, and when he did fly, it was not prohibited, nor any way unlawful, as conceived, for himself, or others, in so-do; and now that he was return'd again, he knew not that he was an so-law'd Person, and if Occasion had been, could have been ready to have traversed any Suit concern'd against him. And as for what he had done in this Business, that there he stood secured for, he said, he was engaged in it by the Supreme Publick Authority of the Nation, the Lawfulness of which Authority, he said, at that Time, was every where acknowledged and reported to be, and that he did not do it to please for himself, he should then have thought, that what was done by himself and others, had been very wicked and abominable! But the Authority being, since that Time, changed, and new Laws made, by which, both the *Fall*, and the *Pescar* itself too, by virtue of which it was done, are both said to have been invalid, (though the Law-makers, at that Time, did not think so,) he had nothing further to add.

This is a true Relation of this Matter, as near as possibly can be, taken from his own Mouth; if any Mistake be in a Word ignorantly related, or Sentence misquod, the Reader is desired to pardon it.

This Col. *Barkhead* having been before-hand at *Lincoln's Inn*, and known to be a good Lawyer, and late Lord Chief Justice in *France*, and also much acquainted, by long Experience, with Affairs of State, as having been a Member in all the Parliaments that have bin since the Beginning of the late King's Regency, and being also further known to have been an ardent and long-experienced, found Christian, a Man of a very tender Conscience, and of an holy Life and Conversation, and that as well in his greatest Prosperity, as in his Adversity, it was the earnest Desire of many, even of all Parties that knew him, fully and clearly to understand from his own Mouth (especially now in this Time of his Adhesion) what inward Peace, Quiet, and Satisfaction he had in his own Conscience, touching that Act which he was condemn'd, and very shortly to die for, and which pulled under so many dreadful Names, of the most heinous, wicked, and unparliamentary Act that was ever done, of the black Murder, most execrable Rebellion, detestable and bloody Crime, that Men ever were guilty of, and like unto which none hath been found to have been ever perpetrated in this World before, except the putting of Christ himself to death.

His Answer to this Question was the more desired, because he being taken for so good a Christian, and so able and experienced a Lawyer and Statesman, as is before described, his Opinion therein would be the more considerable, and his Words be of the greater Weight, which side favour they should fall, whether to the Justification or the Condemnation of the *Fall*.

Now on this Question (which he said he had long before examined thoroughly, and very well digested,) he said he would make this true, faithful, and ingenuous Answer, and hoped he should stand to it, and maintain it to his last Breath. And although he did find (he said) some near Relations were not of his mind in it, yet for his own part he remained steady and unmovable therein; and before several Witnesses (which he said now left surviving) that heard him, declared as followeth:

1. He said, When he was named and appointed by the Parliament to be one of the Judges, he was not present in the House, nor did he at any time give his own personal Consent thereto, or Approbation of it, but rather fully resolved never to engage in that Business.

2. When the Bill came into the House, he spoke against it, and gave his Reasons; nor could he be drawn by any Arguments to appear in the High Court of Justice, or allow of their Proceedings.

3. Yet, 3. The State of Affairs being as then they were, and the Consequence on both sides (either of owning, or not owning and joining in that Act), being with much Prayer and Consideration well weighed by him, he at last came to a fixed Resolution in his Mind about these ensuing Particulars.

1. That the Supreme Authority of the Nation, as then it stood (notwithstanding the alterations made in it) being generally accepted and submitted to at home, and owned by foreign States abroad, without any Question made of it from the Body and Bulk of the People (though here and there some scrupled it, whose Inquiries he ever ready) was lawful and sufficient to warrant all that was or should be done in reference to the late King.

2. That the solemn Appeals made to God on both sides, both by the King on his side, and by the Parliament on their side, all the time of the War, and answered so distinctly and fully from Heaven, on behalf of the Parliament (as all Men then seem'd to judge) did further confirm him in the Warrantableness of their Undertakings, and Righteousness of the whole Cause.

3. That the Forelight of such miserable Changes, as by return of the Hierarchy, and the Concomitants and Effects thereof (which he saw was

aim'd at, and did believe was intended by the late King, at least after some time) did greatly induce him to look into, and fully inform himself about the Matter of the Charge against the said late King.

4. That upon mature and long Deliberations of Parliament, and such as were authorized to search into the Charge of refusal, he found things fully proved; and moreover said, That the *Majesty* objected was of a very unusual and high Nature, not that which properly lay beyond him to do what he did; was the Blood of *Isaiah*, and the *treasoning* War against the Parliament, who were thereupon forced for their own Defence and the Safety of the People (by whom they were traitors, and whose they did reject), to take up Arms, and to assault their Will, to maintain a small colony, dangerous, and unnatural War.

5. That though he was now fully satisfied in his own Mind of the Lawfulness of the *Fall*, as well as of the Power by which it was done, and that it was his Duty no longer to stand out, but to join with the Brethren as an Actor in it, or else he might become guilty of Unlawfulness to the Cause of God and his Country, yet such was his holy and generous Spirit, that he kept back and would not appear in it, the rather, because he was much set upon by his Nephews, Sir Thomas *Corbet* (who then lived in the House with him) not to meddle at all, or have any hand in it. Now this Sir Thomas *Corbet* having a very considerable Estate, to which himself was next heir, and which (in case he should give up to his Mind in this Business) he had Power (by cutting off the *Kent*) to give away from him and his Children, he was loath to displease, for he was apparently which way his said Nephew was bent. Yet,

6. Notwithstanding this, his Conscience wrought much with him, and would not suffer him (he said) to be quiet Night or Day; for while, on the one hand, his eternal Fears and doubts did Thought, pulled him from his Duty (so he called it), yet, on the other hand, it pleased God more strongly to draw him to it, by often bringing and setting home upon his Heart that Scripture in *Revel. xxi. 8. The Fearful and Unbelieving*—*shall bear their Part in the Lake that burneth with Fire and Brimstone*. This Text did so work and work in his Mind, and so powerfully prevail with him, that though he had desired to appear at the High Court of Justice till the very last Day of the Trial, yet then he durst say no longer, but made haste to come in and sit among them, come what would of it in this World, till the aforesaid Punishment of the *Fearful* should hereafter for ever befall him. And when he said this (he said) he did it with a free and relieved Mind, and he blessed God that had conquered his cowardly Spirit, and enabled him at last (though late) to come in and do his Part, and in some measure to prove himself faithful and obedient to God's as well as the Nation's Call hereon. And further said, that upon it a Grounds before alleged, if all that had been done were to be asked again, he would do as he had done, and would not shun an Inch of it; which Words he spoke with the great Sobriety and Solemnity of Mind but the very Day before his Execution.

Lastly, As to the whole Business, he said he could and did appeal to God, the righteous Judge of all things, that what he did (as far as he could discern himself) was not out of any ill Spirit towards the late King's Person, nor out of any least Malice or Detraction to him, nor out of any unworthy End or Design of his own; far as as to the said King's Lands or Goods, or other publick Trust, he never desired nor endeavoured to get any of them, but always by good Providence kept himself free, that neither himself, nor any of his might grow rich, or make the least Advantage that way. And as for that necessary and publick Act of Justice (so he called it), he did never repent at all that he had a hand in it, nor, after all the Searchings of Heart about it, did he Cause to do so, when at any time he had the most fervent and calm Reflections upon it; though he did confess, as to the Circumstances of that Act (the Subtleties whereof he said he must always own), he had been compelled about many sinful Weaknesses and Infirmities in the managing of it, as he had before in part himself, which he hoped and believed were all washed away in the Blood of Christ.

MR. CORBET'S Behaviour.

ON the Day of his Execution, when he was finishing his Prayer, there was a noise at the Door, occasioned by some that desired to come in (not knowing what he was about), to tell him that he must prepare for the Sledge, but that he should be called for the last of the three.

In the mean while he stood himself for his Journey, and first brought himself of his Cap, saying, *Alas! I can carry a Cap to the Gallows!* and so looked out the hole he had. *Pray (said he) I had almost forgot it, but it may be well enough, for I have not said it to any body.*

Then he took his Belt, (which he girted to his back and gave to his Keeper when he should have done with it) and put it into his Pocket, to carry with him as his last and farewell Friend and Companion both to the Sledge and at the Gallows. Next, he put a little Bottle of Cardial into his Pocket for his Use by the Way, an Occasion should be; *But I hope (said he) I shall find a better Cardial, as I know I shall find, for all that.* The same, and his clean Linen put on, viz. Band and Collar, with his Clean clean linnen and fitted about him, and also a new Pair of Glove, put on, which his Wife had provided for him, and which he called his Wedding Glove, he was now in Readiness whenever he should be sent for, which a Friend taking notice of, put him in mind of a Speech which fell from him the Night before, saying, *For you said last Night, the Bridgroom was ready, and the Marriage Supper was ready, and the Robes and Crowns were ready, but that you were not ready!* methinks you are ready now! and a very trim and handsome Bride! To which he graciously replied, *Am I not!* The Lord make me so, blessed be God, I can say I am willing now, as I have good Reason, for I am sure in the best Bridgroom that ever was that I am going to. And you need not be ashamed to go, I wish my Friend, considering what Garments you are clothed with, and how you are decked (alluding to those Words in *Job. li. 10.*). To which he replied, Whatever we have of that kind, it is all of our Bridgroom's own Gift: He is not like other Bridgrooms, for he purchases his Robes,

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Malice either to Judge or Jury, but desire that the Lord would forgive them; as also those as Malice that first set on foot, contrary to what they did engage to my Friends: We will say nothing of them, but pray God that our Blood may not be laid to their Charge, nor to the Charge of any in England.

Then Colonel Barrett addressed himself to speak, as followeth:

Colonel BARRETT'S Speech

Mr. Sheriff,

I Shall, as near as I can, observe your Order, and not willingly do any Thing that shall give Offence. I must confess the Weakness of my Body is such, which hath not been of a Day, but of a long Time; that it will not give me Liberty to speak much, and I have had this Advantage, that my Brethren have spoken before me; and were I to speak at large, I must speak over the same Things which they have spoken already, and I am unwilling to trouble you with that, because you had your Time was spent, and therefore I shall only speak to the Cause as it was at first stated (and, I hope, without Offence, we may say something to you, so far as the Acts of Parliament have failed it up, or rather left it open). Truly therein I did engage very freely at the Beginning of the War for King and Parliament, and so the Place to which I was chosen, I bless the Lord he made me faithful to those I served: As to what hath been since that, I shall forbear to speak to, only in the general way, that before and since I came into this late Trouble, I have begged of the Lord to give me a Sight of all my Sins, and show me a Pardon in the Blood of Jesus Christ, which, through free Grace and Mercy, I can say the Lord hath done. I could not have stood with so much Comfort as I do now at this Time, if he had not given me an Assurance of the Pardon of all my Sins; and when he hath spoken Peace, there is none can speak War or Trouble. I consequently not proper to give you here an Account of my Faith; for if I should, I should go very little aside from my Brethren that have spoken before me: That which hath been my Judgment and my Practice, hath been the Congregational Way. I must own that, and do. I should much rejoice to see a Spirit assuaging that great Mercy that the Lord hath given to this Nation; I mean that great Mercy that he hath bestowed in giving them the Gospel, and that in such a Manner, as truly we, they have been ten hundreds and thousands of Miles among the Pagans abroad, yet I do not know it to be past as it is in this life, blessed be the Lord; and I hope to the Nation of England the Lord will give Hearts to walk accordingly.

And as to the Business of the Government of this Nation, as it now stands, I have prayed for it, and can pray for it, and shall, as long as I have Breath, pray for it; and do, from my Soul, desire that the Lord would bless the King, and give him a Heart to rule for him, and his Glory, and then I am sure the Lord will prosper him.

Indeed, as to those that fear the Lord in the Nation, I could wish that the Lord would settle them, and make them of one Mind; but that is the Work of the Lord, and it must lie there; and truly he will do it in his Time. I must confess, I speak the rather to that, because there hath formerly been something said to me towards Persons that were not of my Judgment, which I have now since was very bad; and I wish God I were here it, and have been here for it. And therefore I do desire, that all that fear the Lord, would seek their Work and their Business in love to love God, and to love one another, and to love the Nation wherein they live, and to give no Disturbance to it: For certainly, Sir, I should leave this, as that which the Lord hath suited upon my Heart; their Work is to be full, yes, their Strength is to be full, for the Lord will do his Work in his own Time; and when he comes to do the Work, there is none shall hinder. I think you have had all Experience of it in the late Wars which the Lord hath done; for I must own it is.

Indeed, Sir, I am sorry that my Weakness of Body doth prevent me from speaking more to you; yet I do bless God that I have this Opportunity. All I shall say further is, That there is a Truth (and I hope I may speak it without Offence) that is much upon my Spirit, and I am confident I shall speak it without any Offence at all. I think we are all here Christians, and there is none here (I think) but faith the Lord's Prayer, and says, *Thy Kingdom come, thy Will be done in Earth, as it is in Heaven, &c.* and I hope they go through the Prayer, and say why they do pray that Prayer; and also say, *For thine is the Kingdom, the Power and the Glory, for ever and ever. Amen.* God hath given the Kingdoms of the Earth to Jesus Christ, he shall reign; and happy and blessed is that King and Nation that hath him for their King. And certainly, for His Majesty that now is, to reign under Jesus Christ, is no Dishonour at all to him: For Christ doth, and shall rule over all the Kings, Princes, and Nations of the World. And therefore, indeed, this is that Kingdom that is most precious, and that we do desire, and all pray that it may come; and I do wish that all Persons would have a Tenderness, and not be at Enmity with, nor hate, nor, as much as they can, cut the Throats of those that own that Kingdom, and the Coming of that Kingdom.

As to other Things, there hath been so much said, that I shall forbear speaking; only this, as to the Business of the King, I bless God I can say it, I was no Actor or Contriver, either within or without. I was many Miles from this Place when that was done: I was put in by the Authority that then sat, and I was called and chosen to that Work; and truly, what I did, I did without any Malice, without any Contrivement in the least; and did, even to the very last, pray for him: And since His Majesty, that now is, came to the Throne, I have, as I have prayed for my own Soul, prayed for him, and that he may reign in Peace and Righteousness, to the Glory of God, and the Good of all the People of the Nation. I shall not trouble you with more, because I fear your Time is past, and my Weakness is such, that I am accelerated to break off.

Then Col. ORRY speaks further, as followeth.

Mr. Sheriff,

It is not only our Judgments now, but it was our Practice when we were beyond the Seas, we did thus say Disputes, we avoided Occasions of leaving our own Countries, because we would have nothing to do with the Affairs in England, but to pray for them, and to persuade to be quiet, and to be still; so that we may say, as Paul did in another Case, *Thy willer stand as in the Temple disputing, or reasoning, or stirring up the People; only our Work was to pray for them.*

Then Mr. Corbet said, "Now we have done speaking to Men, we may now speak unto our God; truly, he must help us, and give us his own Spirit: Men may say Prayers, and read them, but to pray in the Spirit, and to pray so, as to be accepted with God, requires much Strength and Assistance from him." Then Mr. Corbet addressed himself to Prayer, which was very long. The Conclusion was omitted, because of a building among the Hearers.

Then Col. Ormy addressed himself to Prayer.

Then Col. Barrett addressed himself to Prayer, having first spoken to the Sheriff these few Words following.

Mr. Sheriff,

"I do for your Time is spent, and we are drawn up into a very narrow Compass; and I hope you will take my Word now as before. I shall only speak a Word or two unto the Lord, and no more."

Then Col. Ormy spoke a few Words more, as followeth:

"I did break off Duty, because you desired it, and I would not be troublesome to you."

Then he very carefully expressed himself further, as followeth:

"O love the Lord, and hate all Things that are evil. I have found by Experience, more Evil in the least Sin, than Good in any Thing that the Lord can afford; therefore I beg it of all that are here, to love God, and to hate that that is evil. The Lord give you Peace and Truth! I hope our Religious shall not fare the worse for us, but that you will show them Kindness. And as to what my Brother said, I thank the Lord, I have the Assurance of his Love, and the Pardon of my Sins through the Riches of his Grace, and free Love in Jesus Christ."

After this, Col. Barrett called a young Man, who was known to him, and taking a Silver Box out of his Pocket, he charged him to give it to his Daughter.

Their Speeches and Prayers being ended, the Executioner cleared the Court of the rest of the People who were gotten up, and then pulled down their several Caps over their Eyes, and upon the lifting up their Hands, the Court was drawn away; at which Time, Col. Barrett especially was heard to say, *Lord Jesus, receive our Souls!* And after he had bargained for a little Space, he lifted up his Hand.

That which many did especially take Notice of, was, That there was not so much as the least Attentiveness by any to make a triumphant shout upon the drawing away of the Court, but there rather appeared the Symptoms of an universal Face of Sadness in that vast and generally tumultuous Assembly, who were the Spectators of their several Deaths.

They all hung near about a Quarter of an Hour: The first that was cut down was Col. Barrett, who was quartered according to the Sentence; the other Two hanging all the while. The next cut down was Col. Ormy, Mr. Corbet hanging still, who, after Col. Ormy was quartered, had the Execution done upon him also, according to the Sentence. Their several Quarters were brought back to Newgate, about Five of the Clock in the Afternoon, to be buried.

A brief Account of Col. ORRY'S Funeral.

WHEN Col. Ormy's Body was quartered, it pleased the King to send a Warrant to the Sheriff of London, to deliver the quartered Body to be buried where his Wife should think meet; which Thing being granted, without Petition or Application from her, or his Relations; and the Removal of his Funeral suddenly flying about the City, and the Place appointed at St. Sepulchre, (where his first Wife lieth in a fair Vault, which was purchased formerly for a Burial-Place for him and his Family,) there was a numerous Concourse of sober, judicious People assembled to Obey Church, to attend the Corps, and some Thousands more were coming thither to that Purpose; so that there were in View about Twenty Thousand People attending that Solemnity, and coming to the Place assigned, who in a solemn and peaceable Manner behaved themselves, as that Affair required: Yet it so pleased the King to revoke his first Grant to Mrs. Ormy, and by the Sheriff of London to dispossess and send Home again the Company attending the Funeral, which the Sheriff with much Hardiness, and many bitter Words, did his Work. The People, though much troubled at the Disappointment, yet, so soon as they understood the King's Pleasure, departed, and left the mangled Limbs to the Disposal of them that had devoted them to the Gravel and Ash: The Company left away a thousand Sighs to attend him to his third unknown Grave.

That Night the Body was carried to the Tower of London, and there, by Mr. Gougeon, Parson of Berkeley, was buried with the Service Book, solemnly mourning his bleeding Limbs thereby; but Rages are imputed only to the Reviver. Mr. Gougeon could not but say, that his Body was laid there, in sure and certain Hope of a joyful Resurrection. His Testimony was true, though a Port of their own. And now there he lies, and the Tower of London is his Tomb. His Epitaph he partly writ in the Hearts of Thousands at the Place of Execution.

For a particular Account of the Characters and Behaviour of the Regicides, and their Trials, (as given by their Friends) see Ludlow's Memoirs, Vol. III. p. 59, 60, and p. 99, 100.

NUMBER IX.

The Speech and Deportment of Colonel JAMES TURNER, at his Execution in Leadenhall-Street, January 21, 1663, who was condemn'd for Felony and Burglary, in breaking open the House, and robbing of Mr. FRANCIS TRYON, Merchant, living in Lime-Street, LONDON.*

Just Eliza's Clerk, Col. Turner (surround with Mr. Ordinary of Newgate, and another Magistrate) was drawn in a Cart to a Gallies erected on Leadenhall-Street, at Lime-Street End, where coming, Col. Turner call'd the Executioner to him, told him, that his Friends were desirous of all his Clothes, and that in Consequence thereof he gave him 50s. and 2s. 6d. in drink, and about 155. is the Sergeant and Turner, according to his bid Body and Clothes deliver'd to one Mr. Smith then. And speaking to the Cart, said as follows:

SIR, Richard Ford, and you, the other Mr. Sheriff, and all you Gentlemen: I am come higher to pay that Debt I owe, and that every Man owes to Nature; 'tis the just Hand of God upon me for my Sins, and there is no Man hath done me Wrong in it, and truly, it is my Sins, and the greatness of my Sins (and that I am very sensible of) hath brought me hither, and the greatest Sin that troubles me, and has upon me, (which I hope the Lord of JACOB CHURCH, says, I am confident, the Blood of JESUS CHRIST hath wash'd all my Sins away,) is that Sin which I was much addicted to, and that was the Sin of Prophaneness, of dishonouring God, of taking his Name in vain. It is true, I must not only accuse myself, but, in some Sorts, give you the Truth of my Conscience. I never heard any Man or Woman, or whatever they were, swear in my Life, but I did tremble to hear them: For keeping of Company with Gentlemen of Honour (they were Men of Quality, though that were an ill Quality in them) was the Occasion of it. I never kept Company with any poor, base, inferior People, with any Thief, or any such like base Persons, in all my Life, but fled from them, and avoided them, 'till this Accident. Truly, these poor Men engaged in it, I must free them, I brought them into this Business clearly and freely, and I beseech you, Mr. Sheriffs, as I am a living Man, that you will help these People in this Business; your Eliza's Men! As I was telling you, for that great Sin of Swearing: Keeping Company with Persons that did swear, I did get a Habit of Swearing, though I heard it and heard it, when I observed it in myself, and yet I was, it did slip in, forgetting suddenly and not observing, being of a hasty Nature. It was my Rashness, and my Inconsiderateness, that hath brought me hither. Gentlemen, it is excused by all the City, and by all the World, that knows me, that I should make some great and notorious Confessions: It is True, I must, and freely do here confess, as I did before, that 'tis my Sin in general, and that Sin of blaspheming God's Name, I do charge myself particularly with that, as the Occasion of bringing me hither: As for the Faith itself, I do tell you, it was my own AId, my own Contrivance, and the poor Souls that are yonder, knew nothing of it.

Good men, you will be wiser when I am gone: There is my two Sons; I here declare, as I expect Myself by-and-by, at the Hands of any Servant or my God, they are as innocent as at any Person that looks upon me. For the youngest, my Son Eliza, he never knew or heard of one Penny of the Money, or Benefits at all, as before he is clear; he was in his Bed that Night it was done, and in the Morning it was removed from my House: For the elder, he never knew of any Money, or any thing of it, only I told him, that was a Merchant's Money that was broke, and that I would secure it for his Wife and Children; so that he was clearly innocent of any thing the Part of the Richness of the House, he knew not that it was. My first Money, but did carry that Money with me to Tower-Hill, as I bid him, so that he is as innocent as the youngest. You understand me, Mr. Sheriffs, if you had your Servant take to much Money, carry it, and deliver it as you doubt him, What is it to him how y' came by that Money? So that I say, this elder Son, he is (I speak in the Public) as innocent as the other.

I do beg and beseech you, Mr. Sheriffs, in the Bowels of tender Mercy and Compassion, that you would go to the Lord-Mayor, to the Court of Aldermen, that out of two poor young Men may be discharged, let them be as free as the next Soldiers among Thieves and Murderers, for they will be innocent of them. They are a set of Men the Lord of good Parents; my Father was in a Court, I received Divine, a Pension within eleven Miles of Sir Thomas, a pious Minister, very old Eliza's Master of one Parish, my Mother was married to be, a Man of Charity, and for Peace, never talked of him as low; he was Justice of Peace amongst them, Master of them, no Poor wanted any thing, they came to him, he set them down, and set the Poor's Baskets, and composed the Difference with the Rich Men: I am the Son of that Father, enough an infamous Son. With one Gentlewoman's Daughter in Devonshire, her Mother had a great Person, and is yet living; they are of the Family of the Duke of the old King had of her Uncle, which was sent, they were Porters, or Quakers, I know, these Children, they came from the Train of good Persons. The I speak in reference that you will take that I say: Care, that the poor poor Boys may be turned out of Prison. These Children each wish to support them; suppose it your own. I do beg and beseech you, Mr. Sheriffs, to release your Children to Sir John Smith, for my sake, that God may be praised and glorified in the Truth of all Things. Will you promise it, Mr. Sheriffs, that you will never over-

Sir Richard Ford. I do, I have been ready at all Times to promise you any Thing which was in my Power to perform, but ask not that which is not in my Power to grant: You'd see they may be discharged I would.

Terror. That's but comparatively; as soon as possible.

Sir Richard Ford. I do promise you, that this true you have declared concerning your Sins, shall be communicated to the great Judges, and I will endeavour that they may be put out of our Good.

Sir Richard Ford. And I will use my Endeavour in the Thing.

Terror. Pray do, they know nothing of it; pray put them out, my

Wife will wait them, the bath no Comfort left, and this will run her.

Sir Richard Ford. We will do our Endeavour; peace do on.

Terror. I have done, that's for the Children; then for William Turner, what he did, he did as my Infidelity, he asked this as my Infidelity, it was wholly by my Dishonesty, therefore let the poor Man be hanged, discharged, if there be nothing I hang against him but this Fault.

Sir Richard Ford. We will promise that we will take all Occasion to give an Intimation in the Lord Court Justice when you have declared, in consequence of his Cause, as he was a Minister of yours.

Terror. I have told you that it was my Sins that hath brought me hither;

and truly I must deal really with you, this Nation is very full of him, of crying Sin, of Sins, that (without God's wonderful Mercies) the Land

will suddenly mourn by his Hand: I have every Year expects the Leap-

ing Plague to come and take away two-thirds of the Nation for the Sins

that lie upon us; and truly, notwithstanding the Ministers of God do

preach, and call, and cry aloud, yet Nobody regards them. Truly, from

the Magistrate to the very Peasant, there is abundance of Neglect to the

true Service and Fear of God, that my Soul be led and guided within

me, as I have gone up and down the Streets, and as I have lain in my

Bed. And I must necessarily confess to you, that I have not one of

these, nor a hundred Times, but a thousand Times, with myself dis-

satisfied, and in another World. I have been sick of it, not for any Want,

but with the mere Trouble, the Difficult that did to & please me, to see

the manner of Business in Tumults and Disorders, and Sin, and all manner

of Wickedness; that truly I have had no Pleasure (heck, later Years) in

the World, indeed I have not. I have (in my poor Wife) had many a

hundred Times, Lord God, that thou wert in thy Grave, and I were

not it not for these poor Children, truly, I could beg it of God, living

all People are in Confusion, none too in Love and Amity. When I

was a Boy, there was no such Doors, my Father, I told you, was a

Minister, there was eight or ten Gentlemen, adjoining Families, who

kept a House of Hospitality, having Feasting, Fencing, and Gaming;

but now there is no such thing in the World: It is a new World, a World

of Malice and Difference; and 'tis to blame, that Brother do not hang

together in Unity.

It is expected, that I should declare here, as a living Man, somewhat

to free myself from these Allegations, Accusations, and Calumnies, that

have been laid upon me; those Marks with black Coals that People have

laid upon me; I do declare to you, there are a great many Scandals that

lie upon me. I shall not justify myself at all, but rather accuse myself,

that I am, as St. Paul says, The servant of Sinners. But for these Things

that are laid upon me, I must clear my Family and my Reputation, as I

can before God, and in Jesus Christ. It is laid upon me, that I should

take 200 l. of Mr. Humphry's Lady, for to assist her in the helping her Husband,

that was, in the getting him a Pension or Reprieve. To that I answer,

(I know not whether I should say, Mr. Sheriffs, my Lady's Cer-

tificates or no; I heard not of this Business 'till within these two Nights)

I never heard of her, nor her Husband, in such a manner; no, I would

not have had that Sin mix'd with my Blood, nor let me Thousand

Wounds, I should have thought, whenever it had enter'd into my Conscien-

ces, I should have thought myself equally lost: But about that, I first

Mr. Grey, of Black-Friars, who rode with my two Sons the other Night,

he hath brought a Certificate under her Ladyship's Hand to the King

which Certificate, if they will go to my Wife, they may have it, and

peace. She writes, bearing it to the King's Most Excellent Majesty.

That he was inform'd, that *James Turner*, Gent., a Prisoner in Newgate,

is accused for taking 200 l. of her towards the repaying of her Husband's

debt declare the never knew him, nor heard of him, therefore the I

behold in Conscience to free him; and to the humbly takes her Leave.

This is attested by that Gentleman, with an Affidavit under the Hand of

Sir John Brampton, Knight. She got a Letter from Secretary Thrus-

well, who he writes, and sends him all the Business, that one Col. Hous-

hold had 255 l. of my Lady's Receipt, to procure this Business, and that

William Turner pretend, that he had given *Charles* a Hundred Pound of it to

that Purpoze, if they will go to my Wife, they may have it, and

peace. I have said, directly or indirectly, so that *William* was the Person

clearly accused, and the first Mr. W. did, for a sum of for the Money, I

so for that I hope I have satisfied myself before God and the World.

In the second Place, there is another Calumny thrown upon me, and that

is, that I should exact or receive the King that sum of some Money,

when I was beyond Sea with him; truly, it is well known to Thousands

* This Speech should follow his Trial, in Vol. II. p. 352.

rid Piece of Treason, such as no honest Man ought to be and conceal one half Hour, therefore do not justify yourself, it seems not to any Pardon here, or in the World to come. If you are not guilty of the Malice, you have the more easy Access to Comfort hereafter; but that will not help you here on Earth; Pray find that little Time you have to some better Purpose than this; if you have any Thing to say that may become a modest Man to say, we are willing to hear it: If you can remember any Person that assisted you as correcting it, or otherwise were concerned in it, say it.

Yours. No Person assisted me, I corrected it not, it was carried out of my House to correct, and brought in corrected.

Mr. R. Ford. You shall not say that you are denied that Christian Liberty a dying Man ought to have; we are not to suffer any Reflections on the Bishops, you had a fair Trial. I say, we would not deprive you of the Liberty of speaking, but do not abuse that Liberty that is given you, by spending your Time impertinently, and fruitlessly; but if you have any thing further to offer to God, which is more for your Good, go so then.

Yours. I shall further to insist any farther, as to the Narration of that Matter; I shall be very unwilling and tender of reflecting any thing upon the King, or the Government, or give Offence to your Worships any way. Sir R. Ford. Nothing but that shall offend us.

Yours. I shall go to Prayer.

Mr. R. Ford. Do, do, we will join with you, and pray for you.

He continued to private Prayer on the Lord's day Time.

Mr. R. Ford. Executioner, do not turn him off, till he has given you a Sign.

Mr. Ordinary of Newgate. Mr. Yours, give a Sign to the Executioner, when you have done, you must not throw yourself off, you will be your own Executioner in this.

Yours. Executioner, when I give you the Sign, by pulling you by the Shoe, then turn me off.

Executioner. I will, I will, the Lord bless thy poor Soul.

Afterwards, the Executioner coming down, Mr. Yours told him, the Sign should be by moving his Foot.

Yours. O Lord, hear the Prayer of thy poor Slave, receive me into thy Arms. O Lord, in the Prison, receive my Spirit. Lord Jesus! be my Propitius be merciful to my Sins! O Lord, my Strength, and my Redeemer! O Lord, I beseech thee, receive me into the Arms of thy Mercy; let me have an Abundance with thee, to live with thee for ever, and then come, Lord! I feel thee quickly!

Then giving the Sign, the Executioner did his Office; and being cut down, his Head was severed from his Body, and his Body devolved into four Quarters, which are to be disposed of as the King shall assign; since which Time, his Head is placed near Ludgate, and his Quarters upon Aldgate, and other Gates of the City.

It will be here convenient to make Two Observations upon the Words of the Priests.

FIRST, he says, That the Priests were sent out of his House to be corrected, and brought back again corrected, and to not corrected by himself; which is not only contrary to what he formerly owned, as was made out by several Priests at his Trial, concerning his own counselling of it, but to his solemn Declaration at the Bar, avowing, that he knew nothing more of the Business than what he there delivered: For, supposing such a Confession, the next Question would infallibly have been, To whom was it carried? or, Who corrected it? as the readiest way to the Discovery of the Author.

Secondly, he says, That the Persons concerned (meaning Calvert, and her Maid) were neglected that whole Day, being at Home, and easy to be taken, which is disproved, both by his own Servants, and Mrs. Calvert's: And likewise proved, on the other Side, That if he himself would have ordered his Appearance to have look'd after the Maid (as he promised, and was directed), he had been there that very Morning; the Fellow meeting her in St. Bartholomew's Church, within a Quarter of an Hour after his Master was carried away, not knowing that he had any Concern in the Business. As to the Ministers herself, she is, at present, under Custody.

NUMBER XI.

The Earl of CLARENDON's Vindication of Himself against the Articles of Treason exhibited against him in Parliament.*

Mr. Seymour's SPEECH in the House of Lords.

My Lords,

THE Commons assembled in Parliament, having received Information of divers unreasonable Practices and Designs of a great Peer of this House, (Edward Earl of Clarendon) command me to recall the said Edward Earl of Clarendon of Treason, and other Crimes and Misdemeanors; and I do here in their Names, and in the Names of the Commons of England, accuse Edward Earl of Clarendon of Treason, and other high Crimes and Misdemeanors. I am further commanded by the House of Commons, to desire you Lordships, That the Earl of Clarendon may lawfully be frequented from Parliament, and be committed to safe Custody. They further command me to acquaint your Lordships, That they will in convenient Time exhibit the Articles of the Charge against him.

November 24, 1657. The Voice of the House of Lords.

Relieved, &c.

That the Lords have not implied with the Defects of the House of Commons, contrary to the Contract of the Earl of Clarendon, and supposing him to be innocent, because the House of Commons have only accused him of Treason in general, and have not assign'd or specified any particular Treason.

ARTICLES of Treason exhibited in Parliament against Edward Earl of Clarendon.

I. That the Earl of Clarendon hath designed a Standing Army to be raised, and to govern the Kingdom thereby; advising the King to dissolve the present Parliament; to lay aside all Thoughts of Parliaments for the future; to govern by Military Power, and to maintain the same by Free Quarter and Contribution.

II. That he hath, in hearing of many of his Majesty's Subjects, (specially and sedulously) said, the King was in his Heart a Popish, Popish, I ascribed, or Words to that Effect.

III. That he hath received great Sums of Money for passing the Country Patents, and other illegal Patents; and granting several Injunctions to stop Proceedings at Law against them, and other illegal Patents sometimes granted.

IV. That he hath advised and procured divers of his Majesty's Subjects to be imprisoned against Law, in remote Islands, Garisons, and other Places, thereby to prevent them from the Benefit of the Law; and to introduce Precedents for Imprisoning of others of his Majesty's Subjects in like Manner.

V. That he hath corruptly sold several Offices, contrary to Law.

VI. That he hath procured his Majesty's Customs to be farmed at under Rates, knowing the same; and great pretended Debts to be paid by his Majesty, so the Payment whereof his Majesty was not in Satisfaction.

He hath received great Sums of Money for procuring the same.

VII. That he hath received great Sums of Money from the Company of Vintners, or some of them, or their Agents, for changing the Prices of Wine, and for finding them from the Payment of legal Penalties which they had incurred.

VIII. That he hath in a short Time painted to himself a far greater Estate than can be imagined to be lawfully given in so short a Time: And contrary to his Oath, hath procured several Grants under the Great Seal from his Majesty, to himself and Relations, of several of his Majesty's Lands, Hereditaments, and Leases, to the Dispossession of his Majesty.

IX. That he introduced an arbitrary Government in his Majesty's foreign Plantations, and hath caused such as complained thereof, to lose his Majesty's Goodwill, to be long imprisoned for so doing.

X. That he did reject and frustrate a Proposal and Undertaking, approved by his Majesty, for the Preservation of Arms and St. Christopher's, and reducing the French Plantations to his Majesty's Obedience; after the Commissioners were drawn for that Purpose, which was the Occasion of such great Losses and Damages in those Parts.

XI. That he advised and effected the Sale of Dunkirk to the French King, being Part of his Majesty's Dominions, together with the Ammunition, Artillery, and all Sorts of Stores there, and for no greater Value than the said Ammunition, Artillery, and Stores were worth.

XII. That the said Earl did unduly cause his Majesty's Letters Patents under the Great Seal of England (to one Dr. Gougeon) to be altered, and the Invention thereof to be wholly removed.

XIII. That he hath, in an arbitrary Way, examined and drawn into Question divers of his Majesty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties; determined thereof at the Council-Table, and stopped Proceedings at Law; and threatened some that pleaded the Statute of 17 Geo. I.

XIV. That he had caused Sir Warrin's to be forced out against the will of the Corporation of London by Act of Parliament, so the justice he might receive great Sums of Money from them for securing their Liberties, which when they consulted with him, he caused the said Sir Warrin's to be discharged, who complained thence to come.

XV. That he procured the Bills of Indemnity for the Island, and received great Sums of Money, for the same in a most corrupt and unlawful Manner.

XVI. That he hath divided his Majesty and the Nation, in all foreign Treaties and Negotiations relating to the late War.

XVII. That he was a principal Author of that fatal Council of dividing the Fleet, about June 1656.

THE fifth Charge, then, that a printed against me, is, That the Earl of Clarendon hath designed a standing Army to be raised, and to govern the Kingdom thereby.

* This Vindication should be read after the Proceedings against the Earl of Clarendon, in Vol. III. p. 350.

Manuscript, July 16, 1658.

As my self could be seen, regarding to me, one I thought to any Man else, than to find myself, after near Thirty Years Service of the Crown in the highest Trust; after having paid all the Time of his Majesty's Exile with him beyond the Seas, and in his service, and in which the noblest Noble Prince I took was notorious in many Kingdoms; and after I had the Honour and Happiness to return again with his Majesty into England, and to receive from him so many honourable Marks of his Favour, and to serve him near Eight Years after his Return, in the Place of the greatest Trust, without ever having discovered that his Majesty was affected with any, or, in Truth, that he had ever the least of such an Opinion I had ever given him; or that any Person of Honour and Reputation, or Interest in the Nation, had ever made the least Complaint against me, or had any Thought that the Misdemeanors for which I was charged were charged against me, or any Advice of mine. I say, I never then I could not be so willingly imposed, to find myself as a Soldier, when I had not the least Intimation of it, bereft of the King's Favour; and follow to far from his Kindness, as when I was once I was by, after his Majesty had vouchsafed to consult with me in my Affairs for the Death of my Wife, that he intended to take the Great Seal from me; so that I had no such Contact to me, to see and know, that very few Men of Honour or Reputation appeared to

first for them to know their Opinions, Whether they thought what was proposed to be reasonable, and fit to be granted? And if so, why they did not concern themselves in it? They answered, That the Reason why they had not appeared in it was, because they should be Lovers by it, and therefore were not inclinable to obtain a Grant from his Majesty to their own Damage; and in enlarged upon the Nature of the Trade, their long Experience in it, and the Greatness of their Stock, which they should not be allowed to consent under any Regulation. But as they did not think themselves obliged to be solicitous for a Change, so they could not deny, being required by his Majesty to speak the Truth, but that the Proposition that was made was for the publick Good and Benefit of the Kingdom, and that they could conceive no other Way so proper to that Trade, and the Nation, from the Inconvenience which the Spaniards exercised upon us, supposing, that if his Majesty would consent to them, they would likewise consent, and put in carrying on the Service. To which his Majesty gave them gracious Answer, concerning what they depended on one Man, his Majesty remaining confirmed in the former Opinion he had of it. But there remained yet an Objection which was principally insisted upon by the Members of the Revenue, who alleged very reasonably, that this new-moulding of the Trade must produce great Alteration, and would meet fine Opposition from the Spaniards, which for the Time would lessen the Customs, and enable the Farmers to a Detraction. The Petition was therefore referred to the Farmers of the Customs, who were to attend the next Council Day: And being then called in, they acknowledged, that the Design proposed would prove very profitable to the Kingdom in many Respects, upon which they enlarged; and that as the End it would not be attended with any Detraction of the Customs, but for the profit, they said, they could not but expect that the Oldsmen and Contraband of the Spaniards would give leave a Step to Trade, at least for one Year, that if his Majesty did not think better for what should fall short in the Customs, they must look to be very great Losers; the Merchants, on the other Hand, offering to be bound, that if they did not the first Year being in as much as had been usually entered, they would make good what should be wanting to the Farmers upon a Motion; and his Majesty himself declared, that he would not, for a small Damage to himself, hinder the Kingdom from enjoying so great a Benefit; and thereupon he commended the Solicitor-General, who then attended the Board, to prepare such a Charter, as might provide for all their good Ends which were desired in the Petition, and which he did very largely relate. And, I believe, there was never a greater Concurrence of the Board in any Disposition.

Many Months passed before the Charter was drawn; in which Time I never heard of the said new Objection made against it, or that any Man was unsatisfied with it. After it was engrossed, and passed the King's Hand, it was brought to the Great Seal; and then the Lord-Mayor of London and the Court of Aldermen had entered a Consent, and I appeared a Day to hear Parties. The City alleged an Order made a Year or two before by the King in Council, upon a Complaint then exhibited by the Court of Aldermen against the Turkey Company, and other Corporations, in which they said, that if any many Merchants of the said Trade, and of all Estates in the City, who would never take out their Freedom of the City, and did refuse to bear any Charge or Office in it, so the very great Displeasure and Disrespect of the City, and of the Government thereof, they being by this Means compelled to call inferior Citizens to be Aldermen, before they had Estates to bear the Charge of it, whilst the greater and richer could not be compelled to take it, because they were not Freeman: Besides the Rules which the King gave upon the Difference then in Question, he was pleased to declare, and appointed it to be entered as an Order in the Council-Book, that Provision should be made, that in all Charters which he should hereafter grant to any Corporation, or Corporations within the City of London, that they should first make themselves Freeman of the City, if they were not so before; and therefore that this Charter should not pass the Seal, before several Members, who were named in it, had made themselves Freeman of the City, by which they might be made liable to the Charges of it. The Merchants could not deny, that many of them were not yet Freeman, nor relieved to them: They said, they had never heard of this Order: And I declared to them, that I could not seal the Charter before they had given Satisfaction in it; and they seemed as positive that they would rather be without their Charter, than submit to the other Inconvenience, and so they departed thence, but shortly after they agreed to the Obligation, and a Clause to that Purpose was entered in the Charter in the King's Presence, and he returned to me to have the Seal fixed to it.

There were, by this Time, several other new Complaints entered against it, all which I read, and told every one of them to their great Satisfaction. I said that there would be some Motions for the Slipping in in the House of Commons; and some Parliament-Men who served for the Western Boroughs came to me, and desired me that I would use for the Seal in it till they should be heard, since it would undo their Western Trade; and told me, in reference to move the House of Commons to put a stop to it. I informed them of the whole Progress it had had, and told them I believed that they would hardly be able to offer any good Reason against it. However, since it was known that the Parliament would be prorogued within ten or twelve Days, I would suspend the Sealing the Charter until our House sat, to the End that they might make any Objections against it they thought fit. But the Parliament rose shortly after, without further taking Notice of it; and did shake Parliament-Men, or any others, further debate me against the passing of it, and so I fixed the Great Seal to it according to my Duty. Thereupon the Company chose a Governor and other Officers, according to their Charter, and made their Orders and By-Laws as they thought fit, for the carrying on and Advancement of their Trade; which they might also when they found it convenient; and for the present they resolved upon a Joint-Stock, assigning to many Shares to particular Men. In this Composition and Distribution they happened some Difference between themselves, which

could not be taken Notice of Abroad, and even some of them, who felt themselves, and were most solicitous to possess the Charter, did when they could to hinder the Effect of it, first privately to their Factors at the Governor to oppose any Orders which should be sent from the Governor and the Company; and that they should do all they could to incense the Spaniards against the Charter, promising that their Wives should be taken off in Spins of the Corporation: Whereupon, great Disorders did arise in the Governor between the English themselves; and by the Composition of the Spaniards with their few Friends who opposed the Charter, they proceeded so far as to send the principal Actors for the Company out of the Island to Spain, and to make a public Act by the Governor and Council there, that no Ship belonging to the Company should be suffered to come into the Harbour, or to take in any Lading from the Island: All which were transacted these many Months before it was known in England, and probably would have been prevented, or easily mended, if the breaking off of the Plague at London, and the War, had not retarded all English Shipping from going to the Governor for the Space almost of a full Year; which Intermittion likewise gave some Advantage here to the Merchants who opposed the Charter, by the no Return of their several Stocks within the Time promised by the Company.

When the King was at Oxford, and heard what had passed at the Governor, these Merchants appeared there to petition against the Charter, whereof there were some who were the first Petitioners for it: His Majesty appointed a Day for the solemn Hearing of it, in the Presence of his Privy-Council, the Governor being likewise summoned to be there. Upon opening all their Grievances, the Petitioners themselves said first, that they could not complain of the Charter; that it was a full and in itself very clear, and for the great Benefit of the Kingdom, though some private Men might for the present be Losers by it; that their Complaint was only against their Constitutions and By-Laws, and their severe Prosecution of them contrary to the Intention of the Charter itself, inflicting, among other Things, the very first Day limited by the Charter, after which they could not continue their Trade without being Members of the Corporation; and that Day was so soon after the Sealing of the Charter, that it was not possible for them to draw their Stock from thence in so short a Time. When they had finished all their Objections, the King observed to them, that they complained only of what themselves had done, and not of all the Charter, which gave them only Authority to elect a Governor, and make Constitutions and By-Laws, but directed not what these Constitutions and By-Laws should be, which were the Rules of their own Constitutions, in which the major Part must consent; and that that their Joint-stock was one, which, with the rest, they might alter again at their next Court, if the major Part were agreed with it: But because they had complained of these Particulars, in which they seemed to have Reason on their side, his Majesty expressed a Willingness to mediate and make an Agreement between them, and thereupon told the Governor and such and such Particulars, which seemed to have most of Justice, which he did very much at large, making it clearly appear that they had, in Truth, little Cause of Complaint, as to the first Day which was assigned to them for drawing away their Stock, which had the greatest semblance of Reason, he said they had no Reason to complain of Waste of Warning, for that the Day was well enough known to them long before the Sealing of the Charter, and might very well have been complied with; but that they knew likewise, that afterwards the Time was enlarged to a Day desired by themselves, that there might be no Cause of Discontent; and thereupon read the Order of the Court to that Purpose, which they could not deny in Conclusion; since it appeared that their Stock in it remained there, which in Justice belonged to them, whether by the Force of Discretion it had not been drawn over. I being present with the Governor, and his Associates, to give them such Satisfaction in that Particular and others, that before they retired from his Majesty's Presence, they were unanimously agreed upon all their Petitions; and though some of the Leeds, upon some Informations and Discourses they had heard, had believed the Company to be in the wrong, they were now fully convinced of the contrary, and believed the Charter to be founded upon great Reason of State, and that the Execution of it had been very justifiable, and with great Moderation; and it is to be observed, that the Parliament being then assembled at Oxford, there was not the least Complaint against that Charter, or Corporation.

This was the whole Progress of this Affair, and all that I know of the Proceeding in it, in which I will confess, though I had no Hand in the Composition, I was fully involved in the Justice and Integrity of it, and even in the Necessity to Revoke of State and Liberty, upon all the Address made to the King or Council in that whole Transaction, I did, it may be, appear somewhat too warm for the Dispute than other Men; and yet I never remember a further Concernance in the whole from that in this Advice; nor did my Inclination towards it proceed from any other Motive than that of the Publick Good, without the least Temptation, or Imagination of any Profit or Advantage to myself, to which I have never been thought to be ever inclined; and the Delays I said in the passing that Charter, after it came to be sealed, and my giving Time for the weighing all Objections, and so much opposing the Company, with reference to their being made Freeman of the City, that they departed from me with a Resolution to prosecute the Charter no farther, see no Signs that I had such a Mind to please them as a Man would have who was corrupted by them, or who was to have a Share in the Profit of his Patent. For the granting any Injunctions in Chancery to stop Proceedings in the Law, against that or any other Charter, I cannot comprehend the Meaning of that Charge; and do profess that I have never granted any Injunctions in that Court, but what was agreeable to the Course and Justice of it, and I am sure was always done in publick, and upon Debate in the Court.

The Fourth Article is, That I have advised and procured divers of his Majesty's Subjects to be imprisoned under Law, to run to Spain, Germany, and other Places, thereby to prevent them from the Benefit of the Law;

Let us, and to introduce Proceedings for imposing of order of his Majesty's Subsidies in the manner.

I know not what to answer to this Article, it being so general, and so particular Part in being named; but it is generally known, that I have never taken upon me to compose any *Manuscript*, but such who, by the *Consent of the Council*, for Matters of Commerce, are fully committed. It is probable that I have been present at the Council-Board when many Persons have been ordered to be committed, and whole Commissions hath, by the Wisdom of that Board, been thought just and necessary; and therefore I am not to answer apart for any thing done by them; only I may say, that I was frequently of Opinion that the Commissions were very just, and very necessary, and it is notoriously known, that by such Commissions a Rebellion hath been sometimes prevented, and that other Persons, who have been afterwards straitened and executed for High Treason, have, upon this Examination, and at their Death, confessed, that their Purpose had been to rise in Arms at such and such Times, at their Friends, upon whom they had principally relied, had not been then committed to Prison, and I well remember, that it was thought for the most of the Persons who stand animated for the March of the late King, his Majesty's Royal Father, should be removed out of the Tower, and dispersed into several Islands and Gaolards; and of any other Persons have been likewise treated other, I presume it was upon such Reasons, as, upon a due Examination thereof, will make it be thought very just.

The Fifth Article is, *That I have errantly sold several Officers contrary to Law.*

This Charge I utterly deny.

The Sixth Article is, *That I have granted his Majesty's Customs to be forfeited under Rents, touching the same, and great pretences therein to be paid to his Majesty, in the Payment whereof his Majesty was in the said Rents, and he has received great Sums of Money for procuring the same.*

I have never had any thing to do in disposing of his Majesty's Customs, or any other Part of his Revenue, only for some short Time after his Majesty's first Arrival in England; I, amongst others of my Lords of the Council, was a Commissioner of the Treasury; during which Time, if I am not very much mistaken, there was no Form let of any of the Revenue, and the Customs were put into the Hands of Commissioners, to the end that a Computation might be made as near as possible of the true Value of things, before they should be put into a Farm, which seems to me to be the best way to do, as was also the manner of the late King. While such was shortly after given to the Earl of Sandwich, and the Chancellorship of the Exchequer to the Lord Almon, I having then resigned it, and having been before present of it at the Time when the King returned into England; and from the Time that their two Officers of the Revenue were made, which determined the former Commission, I never intermeddled in the Customs, or any other Branch of the Revenue; except when the King commanded me to be present in some Consultations which he had with my Lord Treasurer, when there were other of my Lords likewise present, at that excellent Person always relating to the King, for his Direction in all Matters of the last Difficulty which occurred to him in the Administration of his Office; and respect the Lord Treasurer himself (with whom I had the Honour to have held a long and a free Fellowship) did desire to confer with me, as he sometimes did upon many Particulars of his Office, believing that I was not altogether ignorant of that Administration, with which I had been hitherto well acquainted; and that I presume might be the Reason why he did sometimes procure me to be present with him in References from the King, upon Matters wholly relating to his own Office. But I never suffered particular Applications to be made to me in those Cases, nor has ever any secret Conference with any Persons who were concerned in such Proceedings. What is now by my Lord Treasurer presented in such Proceedings, as under Rents, touching the same, and great pretences therein to be paid to his Majesty, to the Payment whereof his Majesty was in the said Rents, I cannot imagine, except it relates to the Payment of a Debt due from his late Majesty to some of the Farmers; in which, tho' I had no more to do than in giving Information, and my particular Advice to his Majesty, in the Presence of my Lord Treasurer, the Chancellor of the Exchequer, and other of my Lords, and so am myself responsible for what his Majesty did thereupon, and he did nothing but with the Approbation and Consent of all the rest; yet I think myself obliged upon this Particular, which is so much concerns the Honour and Justice of the late King, and of his present Majesty, to his Majesty's Customs to be farmed to what their Majesties did, and what induced his present Majesty to do as he did of it. It is notoriously known, that before the late Troubles, and in the very first Entrance into them, his Majesty was necessitated to borrow very great Sums of Money from his then Farmers of his Customs, and to oblige them to stand personally bound for many other great Sums of Money which other Men lent to his Majesty upon their Secrecy. That thereupon, and for the Repayment of those Sums of Money which the Farmers had advanced, and for securing them from any Damage for those Monies which others had lent upon their Obligations, his Majesty, with the Advice of the then Lord Treasurer and Chancellor of the Exchequer, had granted a further Lease of his Customs to those Farmers for Three or Four Years to come, after the Expiration of their former Lease; with a Consent on his Majesty's Part, to pay the just Interest of Eighteen per Cent. on all such Monies as were advanced by them, or for which they should be bound; and likewise that they should, out of their growing Rent, deduct all such Sums of Money by the Year, as they had lent, or were bound for. It is well known, that after the Beginning of the Parliament in 1640, and before the Commencement of the second Lease, the *House of Commons* not only forced the said Farmers to pay a very great Sum of Money for their Preemption in receiving Customs and Impositions upon Merchandise in the former Years, when, as they pretended, such Payments were not due; but took also from them their new Lease granted to them by the King, and so left them without any Capacities of reimbursing themselves of the Money they had lent, and likewise in the Mercy of their Creditors.

to whom they stood bound; many of whom quickly began to exert, that Seventy towards them, that many of the poor Gentlemen had their Estates quickly extended upon Judgments and Recognizances, and their Persons taken in Execution, and committed to Prison, where I am of them who had been known to have great Estates, as Sir Paul Pindar, and others, were far from repaying their Debts. There were very few Creditors in the late King's Majesties, which gave him so much Trouble, of so much afflicted him, as the Senate had of the hard and unjust sufferings these poor Gentlemen underwent for him, and their Affection to his Service, which he often mentioned, and as often declared, that he held himself obliged to make them full Reparation, as soon as God should enable him. And after he had vouchsafed to make me his Chancellor of the Exchequer, he frequently spoke to me of it, of the very good Opinion he had of the Men, of the great Services they had done for him; and commanded me expressly, that whenever it should fall within my Power, I would do them all the Right I could. And of this I did often inform his Majesty during the Time he was Abroad, and after his Return, without any other Advice than his Father's Command, and his own Honour, having myself never had any Degree of Friendship with any of the Persons concerned, and a very ordinary Acquaintance with some of them. Upon his Majesty's happy Return, those Gentlemen who were alive of the old Farmers (which, as I remember, were Sir John Jacob, Sir John Helyar, Sir Nicholas Ogden, and Sir John Hervey) applied themselves to the King, having lent several Years, and then continuing in Execution in some Prison, and having had their Estates sold, upon the Prosecution of those Creditors to whom they were bound for Monies lent to his Majesty. As soon as Care was taken for collecting the Revenue, the Four Gentlemen named before, and Two others who had served his Majesty very well, were appointed by the Commissioners for the collecting the Customs and Duties, upon Trade, in which Collection they continued for about a Year, or thereabouts, during which Time many of their Creditors, who had generously forbore to prosecute them whilst they were in Prison and undone, began now to convince their Actions against them, persuading they were then, or would shortly be able to satisfy them: Whereupon his Majesty commanded my Lord Treasurer, and me, with some other Lords, as I remember, to send for those Creditors, and to declare to them, that his Majesty would, in a short Time, enable his Father to pay them their just Debts, which he well knew were contracted for his Service, and that he would take it very well from them, if they would for the present make no Objection to his Service, by the Prosecution of their Persons at Law, until such Time as they should be able to satisfy their Creditors. Whereupon they willingly desisted from that Prosecution; and many of them finding now, that by his Majesty's Favour they were like to receive their Debts, which before they thought desperate, they frankly returned the Whole, or Part of the Interest, that in Indignity of Law was due to them. His Majesty, shortly after, judging it best for his Profit to determine the Collection by Commission, and to let the Whole to Farm, gave Direction to the Lord Treasurer to confer and treat with any Persons who offered the same. Many Overtures were made by several Persons, and some applied themselves directly to his Majesty; upon which, and after a convenient Time to consider of all that was proposed, the King appointed a Day when he would be attended by my Lord Treasurer, and other of my Lords, and when all the Proposals should likewise be present, and he would then and there declare his own Judgment; having first declared to the Commissioners, whereof Four were old Farmers to whom so much Money was due, that whosoever should take the Farm, they should be obliged to pay them their just Debt at such Times, and by such Proportions as his Service could bear; but as to the Letting the Farm itself, he should neither consider the Debt he owed them, nor the Sufferings they had undergone, but only the Rent they should offer, which if as much as any Body else would give, he would give them their Period as long before others; but if any other fit Man would offer them that they thought fit to give, they should be his Farmers; and therefore he did then well to consider what they would propose to him. After two Days spent by his Majesty in Conference with several Pretenders apart, and finding that the Proposals made to him by the old Farmers, with whom the other Two were to be joined who had served with them as Commissioners, were at least as much, if not more for his Profit than any which had been made by the rest, he declared that the Farm should be let to those who had been his Commissioners. Which was at that Time understood to be to go from a good Bargain, that the Two Commissioners who were not concerned in the great Debt, should be obliged to meddle with the Farm at so great a Rent; the other Four publicly declaring at the same Time, that they would not give the Rent but in Contempt of their Debts, which they thought they should sooner and better receive, when it should be offered upon their own Collections, than when it should be charged upon new Farmers; but were Sunkers to his Majesty, that he would oblige the other Two (Sir John Widdowes and Sir John Skene) to be joint Farmers with them, which his Majesty did, by making them a gracious Promise, that if they should be Loafers he would repair them: And thereupon Directions were given to Mr. Attorney-General to prepare a Grant accordingly; and I do not know where was one dissenting Voice from what his Majesty inclined to do upon the whole Debate of that Matter, the same applying to every Man to be lost just and reasonable.

The Farm being thus settled, the old Farmers were directed to bring their Account to my Lord Treasurer, by which it should manifestly appear how much the late King was justly and truly indebted to them, and how those Debts were incurred; that is, upon a just Computation, such a Satisfaction might be made to them, as was consistent with the present State of his Majesty's Occasions. Many Men, if not a whole Year, were spent in the Examination of those Accounts before the Auditors; who, besides the Exceptions they took for want of some Formalities, in the Proof of some Monies paid, which after Twenty Years of Licence, in which all their Books and Papers had been taken, their Houses plundered, their Persons imprisoned, and in which so many Persons employed by the King to receive, and by them to deliver, were dead.

on other Parts of Trade, from which it had formerly yielded. The first Consideration that offered itself to the King, that related to the Plantations, was concerning the *Barbadoes*, which having been most deteriorated of since, and in which, with some Reflections upon one of Particular, and together, I think, is the first Place, for down all I know in that Affair, and how I came to it, in it.

Before the Beginning of the late Trouble, the King had granted the Island of the *Barbadoes* to the Earl of Carlisle and his three sons, upon a Surrender upon which had been first dissolved, perfused, and planted at his Charge; and the said Earl sent a Governor and People thither, and enjoyed it to his Death, and by his Will bequeathed it for the Payment of his Debt, which was very great. The Trouble falling out in a short Time after, the said Profit had been drawn from thence in respect of the Satisfaction of that Debt, viz. the Excavators and Trustees totally neglected the taking Care of it, or protecting the Plantation; but as and after the War, many Citizens, Merchants, and Gentlemen, who were willing to be forced to withdraw their Interest from England, incorporated themselves thither, and there planted, without asking any body's Leave, or without being opposed or interfered by any body. About the Year 1647, or thereabouts, the late Earl of Carlisle, Sir John and Henry of the latter Earl, in whose the Intestment of that Island being sold, treated with the late Lord *William* of *Windsor* for him, how that Island might be so altered, that the Plantation might be advanced, and Profit made by it, which would be still reason to justify when the Debt should be paid. The late King was then in the Hands of the Army, and with his Approbation and Consent, it was agreed between the said Earl and the said Lord, that a Lease should be made by the Earl of Carlisle to the Lord *William*, of all the Profits which should arise out of that Plantation for the Term of twenty-one Years, as I remember; a Majority of the whole Profits to be received by the Lord *William*, himself, for his own Use, and Recompense of his Charge and Pains, and the said Lord to receive a Commission from the said Earl, to be Governor of that Island, and the rest of the *Caribbean* Islands (all which were comprehended in the Charter granted by the King to the Earl of Carlisle), and that a Commission should likewise be received from the King, or the Prince of Wales, by which the said Lord *William* was to be constituted Governor of the said Island. About that Time the Fleet, then in the *Deane*, was used to their Obedience to the King, withdrawing themselves to the Coast of *Holland*, to offer their Service to the Prince of Wales, his Majesty that year; the Lord *William* coming himself over to them to him, to leave him in any Condition he pleased to employ him. I need not speak of the Disappointments of that Venture, and the Success of that Fleet, but that the Affairs being unravelled, and there being no present Employment for the Lord *William*, his son entered the Service of what had passed between the Earl of Carlisle and him, with his Father's Consent, which his Majesty had likewise given to the Earl of Carlisle, with his Majesty's Recommendation of the Lord *William*. I then sent attending upon the Prince in *Holland*, as one of the King's Council attended by him for that Service. Upon the understanding of this whole Case, the Prince, upon the assurance of Advice of the Council, thought fit to grant him a Commission of Governor of the *Barbadoes* and other Islands, as he desired; and he had the more Reason to desire it (notwithstanding the Earl of Carlisle's Grant and Commission), because the principal Planters upon the *Barbadoes* had been Officers in the King's Army, or of manifest Affection to him, or always looked upon as of his Party. With this Commission the Lord *William* had, at his great Charge and Expence, transported himself to the said Island, and was there received as Governor; and made a Contract with the Planters, that so much should be paid upon the Hundred to the Earl of Carlisle, to whom the Propriety of the Whole belonged. But before this Agreement could be well executed, or any Profit drawn from thence, the Island was reduced to the Service of the Parliament, and of Cromwell, and a Governor appointed by them; the Lord *William* being sent into *England*, where he remained till the King's Return, and had given unquestionable Evidence of his Affection to the King's Service, for which he had oft been commended to Prison before and after Cromwell's Death.

As soon as the King returned, the Lord *William* desired to him to send eight or nine Years to come of his Lease formerly granted to him by the Earl of Carlisle, who was then likewise in England, and ready to do any other Act to the Lord *William*'s Advantage; resolved to return himself to the *Barbadoes*, and desired the King to renew his Commission to him for the Government, which his Majesty was very willing to do, as in a Person he esteemed very much, and who had spent very much of his own Fortune, as is commonly known, in that Service; but the *Barbadoes* and all those other Islands were now become of another Consideration and Value than they had been of before this Trouble; the *Barbadoes* itself was (by that Consideration and Respect thither as was mentioned before), so fully planted, that there was no Room for new Colonies, and there had not very many of that People in the other Islands to plant, many Citizens of *London* had raised very great Estates there, and every Year had a great Revenue thence; and the King's Colonies from that one Island came to a very great Sum of Money yearly. All these Men, who had entered upon that Plantation as a waste Place, and with very great Charge brought it to that Perfection, and, with great Trouble, began now to apprehend that they must depend upon the good Will of the Earl of Carlisle and Lord *William* for the Enjoyment of their Estates thence, which they looked upon as their own; all these Men joined together in an Appeal to the King, and humbly prayed his Protection; and that they might not be oppressed by these two Lords, they said, they were the King's Subjects; that they had remained thither as to a desolate Place, and had by their Industry obtained a Livelihood there, when they could see with a good Confidence they in *England*; that if they were now left to those Lords to remove thence, they would be impoverished their Estates, they must leave the Country, and that Plantation would be destroyed, which yielded his Majesty so great a Revenue; that they could defend themselves by Law against the Earl of Carlisle's Title, if his Majesty did not countenance it by a new Grant of the Government to the Lord *William*, and therefore were

Suitors to his Majesty. They then by that Consideration. At the same Time, the *Creditors* of the late Earl of Carlisle (whose Debts were to be paid by the Profits of that Plantation, by the Will and Settlement of the late Earl) petitioned the King, that they might be first provided for; their principal Money due to them at the Death of the Earl amounted to no less than Fifty thousand Pounds, of which they had never just received one Penny; and therefore that the Profit which should arise ought to be the first place to be applied to them, then having been many Estates utterly ruined for want of their Money due to them. The King appointed to hear all the several Petitions at the Council-Board, where they all attended with their Counsel; and after his Majesty had spent three or four Days himself in hearing the several Allegations, and making new Considerations and Difficulties every Day as arise (which shall be mentioned anon), his Majesty appointed several of my Lords of the Council to consider of the whole Matter, and to confer with the several Parties, and it was profitable to make an End between them by their own Consent; otherwise to report the several Titles to his Majesty, with each Expression as to their Judgements they thought most likely to produce a general Satisfaction, without endangering the Plantation, the Preference whereof his Majesty took to Heart. I had the Honour to be one of that Committee, and took very much Pains in reading the Charters, Grants, and Letters, and many other Papers, and Disputes which concerned that Affair, and conferred with several of the Parties themselves, to the end that I might be the better advised what could be done, having never understood or heard any thing of the Matter, or that concerned that Plantation, otherwise it is what I have before set down upon the Dispatch of the Lord *William* in *Holland*; nor had I the least Inclination or Bias to any Party. Upon the hearing all the Allegations before my Lords, the several Petitions and Titles appeared to us to be such, which we afterwards reported to the King.

The Lord *William* showed in doing, from the King but his Commission to be Governor in the Year 1647, in the Year which had been granted to him by the Earl of Carlisle, to the end that he might receive the Majority of their Profits which should arise to the Earl, and which had been assigned to him with the Consent and Approbation of the late King, and his Majesty that now, upon which he had undertaken that Voyage, and spent so much of his Estate.

The Earl of Carlisle, while this Commission was depending, died, and by his Will devised his Estate to the *Barbadoes* to the Earl of *Arundel*, who likewise petitioned the King for the reviving his Right; but neither he, nor the Person under whom he claimed, had any Petition till all the Debts were satisfied, nor did the Earl of *Arundel* demand any thing till then, but he asked the Profit would be so ready to be so much, that the same would quickly be answered, and then the Whole would come to him.

There was another Title that preceded the Earl of Carlisle's, which was that of the Earl of *Albany*, who alleged and proved it to be true, that the *Barbadoes* and those adjacent Islands were first granted by the King to his Grandfather the Earl of *Albany*, then Lord High-Treasurer of *England*, before the Earl of Carlisle had any Petition thereunto; and that the Lord Treasurer had afterwards sold and that the same should be granted to the Earl of Carlisle upon a full Contract, that he should be paid for ever the Sum of Three hundred Pounds by the Year out of the Profits of the Plantations; which Sum of three hundred Pounds had not yet been paid, and therefore the Earl of *Albany* demanded, as he had so much Reason, to have Satisfaction for the Arrears, and that the growing Rent might be paid to him.

The *Creditors* were of two kinds. The first, and who had first petitioned the King, as was said before, had all consent made to them by the Executors and Trustees of the Earl of Carlisle upon his Will, and who, at his Death, asked them the full Sum of Fifty thousand Pounds, or thereabouts: I do not remember whether of several Tradesmen and Artificers, to whom the said Earl was indebted for Wares and Goods which had been delivered for his Use, and of several Servants for that Art and Wage; and all these had, during the late Troubles, exhibited their Bills to Chancery against the Executors and Trustees of the late Earl, and had obtained a Decree in that Court for their Satisfaction, out of the Profits of those Plantations; which Decree had been confirmed by the Acts of judicial Proceedings; and as I remember, their Debts amounted to Thirty thousand Pounds, or thereabouts: None of the *Creditors* in personal, or one of the other Sort, had ever received one Shilling from the Time that the Earl had fallen ill.

The Planters wished positively, that the Charter granted to the Earl of Carlisle by the King was void in Point of Law; for which their Counsel alleged many Reasons: And having spent much Time upon that Argumentation, they concluded upon some humble Propositions to the King, first, That his Majesty would give them Leave to prosecute in his Name in the *Lawsuits*, and at that soon Charge, to repeal that Grant to the Earl of Carlisle; by which they should be freed from the Arbitrary Power and Oppression which would be exerted upon them under the Colour of that Charter, and should fully receive a great Benefit to himself, by taking the Sovereignty to himself, to whom it justly belonged: And in that case they did red in their own Name, and for the sake of the Planters who were in the Island, to consent unto any Imposition of so much upon the Hundred, which they constantly asked would amount to at least Ten thousand Pounds a Year, out of which his Majesty's Government might be well supported, and his Majesty dispose of the Overplus as he thought fit. Secondly, If his Majesty would not suffer the Cause to be repealed, that he would leave those who claimed with the Earl of Carlisle's Patent to their Remedy at Law, and leave the Planters to their own Defence; which they hoped in Justice could not be denied to them, since they alone had been at the Charge to settle the Plantations, which a benefit so great a Revenue every Year to his Majesty, when the Earl had not been at the least Expence thereupon; and if his Majesty should not allow their Petitions with his Royal Authority, they must all quit the Plantation, which would be to his Majesty's great Damage.

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These being the several Pretences of the several Persons; and nothing being to be done by any Agreement between themselves, their Interests being so different and inconsistent with each other, his Majesty thought fit, in the first place, to refer the Consideration of the Legality and Validity of the Patent to his Council at Law; who, upon full Deliberation, after the hearing of all Parties, returned their Opinion, that their Patent was void, and that his Majesty might take the same into his own Power. This Report was so far from made to his Majesty, but that he very graciously declared, he would not forerunne receive any Benefit and Advantage to himself, until all these Pretences had received Satisfaction, and that he would make no other Use of avoiding the said Charter, than to dispose the Profits of the Plantation to those who in Justice had any Pretence in Law or Equity to receive the same; and therefore, that the Lord Willoughby should proceed in his Voyage to the Barbadoes, and should receive according to his Bargain a Majority of the Profits, and that the other should be disposed of for the Satisfaction of the Legality and Validity of the Patent; in order to which, his Majesty appointed the same Committee of the Lords to meet again, and to adjust the several Pretences.

When they met, they had all the Persons concerned present with them, or ready to be called in upon any Occasion; and they all appeared very glad that the King had taken the Care and Protection of the Plantation upon himself, which was all the Security the Planters had or could desire; and the Lords first Care was to make some Computation of what might be depended upon as the yearly Revenue that would arise upon the Imposition within one Island: But the Planters could not be drawn to any particular Agreement in that Point, not so much as to confess or what should be imposed upon every Hundred; but, on the contrary, declared, that two-thirds had been undertaken in that kind by one of their own Number (Mr. Kewley) in his Discourse before the King in the Council, and declared that the Plantation could not bear the Imposition he had undertaken; that whatsoever was to be done of this Nature was to be transacted by an Assembly in the Island, and that all that they could promise for themselves was, that they would use their utmost Endeavours with their Friends in the Island, that when the Lord Willoughby should arrive there, and call an Assembly, they should consent to as great an Imposition as the Plantation would bear; by which a good Revenue would arise to the King for the Purposes aforesaid.

The Creditors had great Reason to be glad of the Resolution his Majesty had taken; for though it would be a long Time before they could be fully satisfied out of a Majority of the Profits, though it should bring to the highest Consequence; yet Time they should receive all, and should every Year receive more. Which would lessen their Debt, and relieve those who were in the highest Necessities, of which there was a great Number; whereas they had hitherto, in so many Years, received none Penny; and it was evident, that without his Majesty's Authority they never should, since the Planters were resolved never to consent to any Imposition, or submit to any Authority that should be exercised under the Earl of Carlisle's Patent without a due Course of Law, the Way to obtain which would be very difficult to find out; and they understood well enough, that without his Majesty's Grace and Bounty to them, the Request, or revoking the Earl of Carlisle's Patent, would put a quick End to all their Pretences.

The greatest Difficulty that did arise was from the Earl of Arundel, to whom the late Earl of Carlisle had devised these Islands by his Will, and he had a great Mind to go further himself, and take Possession of his Right; and his Counsel had persuaded him, that the King's Charter granted to the first Earl of Carlisle was good and valid in Law, and that they believed they could maintain and defend it in any Court of Justice. Then his own Estate in Arundel was totally left by the Iniquity of the Times, and by his Father's having so frankly declared himself for the King, when very few of that Number lost any thing by their Loyalty, that he had very little left to support himself; and therefore was willing to retire into any Place abroad, where he might find but a bare Subsistence: But when he considered again, that he could have no Pretence to any thing in the Barbadoes, all after all the Creditors were fully satisfied, and how long it was like to be before they could be furnished, there remaining still due to the Creditors of both kinds no less than Fourteen Thousand Pounds Sterling principal Money, he did not believe that his insisting upon the Patent would be worth the Charge and Hazard he might inevitably be put to; and therefore, upon further Deliberation with his Friends, he willingly referred himself and all his Interest to the King's gracious Determination, as all the rest of the Pretenders and interested Persons had done.

The Case being thus fully stated to the Lords, and every Man's Interest or Pretence clearly appearing to them, they considered privately amongst themselves, when they might reasonably propose to the several Persons, in order to their Agreement amongst themselves; and that proving ineffectual, what Advice they might reasonably give his Majesty. They were unanimously of Opinion, not to advise his Majesty to cause the Patent to be called in Question; for though they doubted not, upon the Opinion of his learned Council, that the same would be adjudged void and illegal, yet they did not think it a seasonable Time, when the Nation is so active and industrious in foreign Plantations, that they should be a Charter or Patent questioned, and avoided, after it had been so many Years allowed and countenanced, and under which it had so long flourished, and was almost grown to Perfection; and that since his Majesty had declared, that notwithstanding any Right of his own, all possible Care should be taken for the Satisfaction of the Creditors, in order to the Preservation and Support of the Plantation, it would be equally equitable and honourable in his Majesty, not to leave the Earl of Arundel the only Person unconsidered, and bereaved of all his Pretences; but that they would humbly move his Majesty, that he would graciously vouchsafe to assign some proper Maintenance to the said Earl, which his unhappy Condition required, out of the Revenue which should be there sent, and until the Debts should be paid; and that after that Time such an

Augmentation might be made to him as his Majesty in his Royal Bounty should think fit; in Consideration whereof the Earl should procure the Patent to be brought in and surrendered: Which he promised should be done accordingly, as soon as the Settlement should be made of that Property which should be assigned to him.

That the Lord Willoughby should enjoy the Benefit of his former Contract with the Earl of Carlisle, and approved by his Majesty, during the Remainder of those Years which are not yet expired; that he should make what Haste he could thither, and call an Assembly, to the end that such an Imposition might be agreed upon to be paid to his Majesty as should be reasonable, in consideration of the great Benefit they had already and should still enjoy, in being countenanced and secured in their several Plantations, of which at any yet were, as it were, but Tenants at Will, bearing no other Pretence of Right but the Possession; and therefore, that such Merchants and Planters who had petitioned the King, should, according to their Obligation and Promise made by them to his Majesty, use all their Credit with those in the Island, that the Imposition might arise to such a Proportion that the Revenue might answer the Ends proposed, and that one Majesty of that Revenue should be enjoyed by the Lord Willoughby for his Term.

That the Annuity of Three Hundred Pounds a Year should be paid to the Earl of Arundel, according to the original Contract mentioned before; and that the Assignment that his Majesty would likewise be pleased to make to the Earl of Arundel, should be likewise first paid; and then that the Remainder of that Money should be received to the Use of the Creditors; and that when the Lord Willoughby's Term should be expired, his Majesty should be desired, after the Refutation of so much as he should think fit for the Support of his Governor, that all the Remains might be continued towards the Creditors, whilst their just Debts should be paid.

Their Particulars appearing reasonable to the Lords, all Persons concerned were called, and the same communicated to them, who appeared all well contented; and thereupon the Lords resolved to present the same to his Majesty, which they did accordingly at the Board, and his Majesty, with a full Approbation and Advice of the whole Council, ratified the same; whereupon that Order was made by his Majesty in Council, which comprehends all the Particulars mentioned before, which was delivered to the Lord Willoughby, with his Majesty's express Command, that he should see it punctually and precisely executed; and the like Order was directed to the Clerk of the Council, to every other Person mentioned, who define the Time: To which Order I do for the more Certainty refer myself, being in no Degree conscious (having at this Time no other Help than my Memory) that it is let down with that Exactness as it ought to be. As I have thoroughly Affair taken very great Pains to reduce it to this particular Agreement, which at that Time seemed to be satisfactory to all the Persons concerned, and I do not the least Temptation of particular Benefit to myself, and I do still believe it to be very just and reasonable, and agreeable to his Majesty's Justice and Goodness, all Circumstances being considered; and though it may be, in strictness of Law, and by the avoiding the Grant made to the Earl of Carlisle, his Majesty might have possessed himself of the whole Island, without any further Consideration of the Planters or of the Creditors, I am not ashamed that I never gave his Majesty that or the like Council, in this or any other Matter of the like Nature; and if I had, I am confident his Majesty would have abhorred it, and not have thought the better of me for giving it.

The other Part of this Article, That I have caused such as complained of the arbitrary Government in the Plantations before the King and Council, to be long imprisoned for so doing, does refer, I suppose, to the Commitment of one Farmer; who being sent over to a Prisoner by the Lord Willoughby, in a Ship that came from thence, made his Appearance at Oxford, his Majesty being then there in the Sickens-Time, which was the first Time I ever heard of the Matter, or of the Manner, and at the same Time one of the Secretaries of State received a Letter from the Lord Willoughby, which was first by the same Ship, in which his Lordship had sent a direct, full Charge of Mutiny, Sedition, and Treason against him; and by his Letter informed the Secretary of all the Behaviour and Carriage of the said Farmer, with all the Circumstances thereof; and that he had, by his sedition Practices, prevailed so far upon a dissatisfied Party in that Island, that the Lord Willoughby was obliged in the instant to send him aboard the Ship, without which he did apprehend a general Revolt in the Island from his Majesty's Obedience: And the Lord Willoughby likewise desired that he might not be suffered to return thither before the Island should be reduced to a better Temper. The Man was called in before the King and Council, and the Charge which the Lord Willoughby had sent read to him: The greatest Pain whether he could not deny; and in his Discourse upon it he showed himself so prematurely and insolently before the King, that his Majesty thought it very necessary to commit him, nor did any one Counsellor then present appear to think otherwise: And I do confess, that the discharging him from his Imprisonment was some time afterwards moved, and that I was always against his Discharge; being of Opinion that it was impossible for the Lord Willoughby, or any other Governor in any of the Plantations, to preserve his Majesty's Right, and support the Government, if he should be so far discontinued, that a Man sent over by him as a Prisoner, under such a pretence and so heinous a Charge, should be upon his Appearance here in as Liberty, as any other Person; that he should be sent back a Prisoner thence, that he might be tried by the Law and Justice of the Island, and receive the ordinary Fundament for his Offence. And I cannot deny, but that I am still of the same Opinion; and if it be an Error, it proceeds from the Weakness of my Understanding, which is not in my Power to reform.

What I have here set down, is all that occurs to my Memory with reference to the Island of the Barbadoes, which being not particularly mentioned in the Article, but comprehended under the general Expression of his Majesty's foreign Plantations, I take myself obliged to

give some Answer, even to that General: And I hope it will not be suggested as a Crime to me, if I have taken more Pains than other Men in this important Service of his Majesty concerning his foreign Plantations, which I did not think was enough taken to Heart; and if my Desire and Readiness to take any Pains, or give any Assistance to the Advancement of that Service, did induce many Persons to apply themselves to me on those Occasions, I hope it shall not be charged upon me as over Affecting, or Ambitious to ingratiate myself into his Majesty's Hands: thus I was intreated, for which I have this Excuse to make for myself, that I found the Pains I took to be acceptable to his Majesty: And I was so far from having any particular Design or Advantage to myself, that I do profess and declare, that for all or any of his Majesty's foreign Plantations I never had the least Interest, or the least Profit made me, except that the new Lord of Barbadoes once told me, that his Brother had found some Pieces of the speckled Wood which grows in Barbadoes, with Dead-on, that if I liked it, I might have what I would of it; whereupon I had some Pieces, which I thought might have been applied to the making of Cabinets, or the adorning of Windows; but as they were very small, to the Model. Every Piece was wind-shaken and rotten, that they could not be applied to any considerable Use; and except some Blocks of Walnut-Tree which the Governor of Virginia sent to me, and of which I made some of the Boards and Frames for Chairs, the Workmanship whereof cost me much more than the Wood was worth: And these two Particulars contain all the Rewards and Profits, that ever I received from all his Majesty's foreign Plantations, or any body, to my Use.

The Tenth Article is, That I did reject and frustrate a Proposal and Undertaking offered by his Majesty, for the Preservation of Nova and St. Christopher, and reducing the French Plantations to his Majesty's Obedience, after the Commission was drawn for that Purpose, which was the Occasion of the great Loss and Damage in this Part.

I never did reject or frustrate any such Proposal or Undertaking, never taking upon me in the least Degree to make a Judgment of Things of that Nature, nor was ever any such Proposal made to me; but I do very well remember, that his Majesty himself did once deliver to the Council a Paper, which he had sent out of his Service, Mr. May, had delivered to him, containing some Propositions for Ships and Men to be sent by his Majesty for the Recovery of St. Christopher, which had been newly taken by the French. Upon the reading of which Paper and Propositions, the same were referred to the Consideration of the Lord-General, one of the Secretaries of State, and to the Vice-Chamberlain, as I remember; who were to confer with Mr. May, and each others as joined with him; and they were at the first Time appointed to consider of another Proposition delivered in Writing by the new Lord Walsingham and some Merchants of London, who were Planters in the Barbadoes, for the supplying and better securing that Island, and the rest of those Barbadoes Islands, and for the reducing and recovering any of them which were at that time taken by the Enemy; upon the latter of these Proposals it was afterwards made: And if the other concerning Nova and St. Christopher was rejected, of which I knew nothing, I presume it is, because it either appeared ungratifiable, or not consistent with his Majesty's other Affairs.

The Eleventh Article is, That I advised and effected the Sale of Dunkirk to the French King, being Part of his Majesty's Domain, together with the Ammunition, Artillery, and all Sorts of Stores there, and for no greater Value than the said Ammunition, Artillery, and Stores were worth.

It is very well known to his Majesty, and to several Persons yet alive, that the partying with Dunkirk was resolved upon before ever I heard of it, and that the Purpose was therefore conceived from the beginning; and I believe that I was not of that Opinion, and that I would not concur in the Advice. When it was afterwards proposed and debated, when I was present, there likewise attending upon his Majesty and his Royal Highness the late Lord Treasurer, two Secretaries of State, and some other of the Lords of the Council, the Reasons that were given for the partying with it, were, First, That the Profit which did or could accrue to the Kingdom by keeping it, was very considerable, whether in War or Peace; that by Sea it was very little useful, it being no Harbour, nor having Place for our Ships to ride safe in, and that if it were in the Hand of the Enemy, it could do us much Injury, because three or four Ships might block it up, and keep it out of our Neighbourhood; and that though heinous it had been a Place of Licence at Sea, and had much obstructed Trade by their Men at War, yet that proceeded only from the Weakness of that Time, in applying proper Remedies as it, which was manifest by Cromwell's blocking them up, and restraining them when he made War upon them, inasmuch as all the Men of War left that Place, and broke themselves to other Harbours; that it was so weak in the Land (notwithstanding the great Charge his Majesty had been at in the Fortifications, which were not yet finished), by the Situation and the Soil, that it required as many Men within to defend it, as the Army should consist of that besieged it, otherwise, that it could never hold out and endure a Siege of two Months, as appeared clearly by its having been taken and given in many Times within the last Year, in all which Times it was held out so long, though there was always an Army at no great Distance to relieve it. Secondly, That the Charge of keeping and maintaining it, without any Accidents from the Attempt of an Enemy, did amount unto above One hundred and twenty thousand Pounds a Year, which was a Sum the Revenue of the Crown could not support, without leaving many other Particulars of much more Importance unprovided for; and this was not lightly urged, but the State of the Revenue, and the constant and insupportable Issues were at the same Time presented. Thirdly, It could not reasonably be believed, but that if Dunkirk were kept, his Majesty would be shortly involved in a War with one of the two Crowns: The Spanish Ambassador had already demanded the Restoration of it in Point of Justice, it having been taken from his Master by the late Union, in a Time when there was not only a Peace between his

Majesty and the King of Spain, but when his Majesty ended and was entertained by the Catholic King in Flanders; and at the same Time, both France and Spain withheld their Subjects from paying their small Contributions to the Garrison at Dunkirk, and endeavored to relieve the Governor himself from enjoying those Privileges which had been always enjoyed by him, from the Time that it was put into Cromwell's Hands; and it was then concerted, that as it would be very good for the King to prefer a Neutrality towards both Crowns, even during the Time of the War between them (which Temper was thought very necessary for his Majesty's Affairs), so it would be much more difficult to avoid a War with one of them upon the keeping of Dunkirk, if the Peace that was newly made should remain firm and unbroken. Upon these Reasons, (the major Part whereof were out of my Sight, and I could only govern myself by the Opinion of those who understood Matters of that Nature, nor could I answer any of the Arguments which have been offered) his Majesty resolved to safe himself of the Burthen of maintaining Dunkirk, and to part with it in such a Manner as might be most for his Advantage and Benefit. There remained then no other Question, than into what Hand should it? And the Measure of that was only who would give most Money for it, there being then no Inclination to prefer one before another. It was enough understood, that both Crowns would be very glad to have it, and would probably both make large Offers for it; but it was then so evident, that whatsoever France should choose for, the King might be fain to receive, and the Subjects would be least displeased; whereas, on the other Hand, it was as notorious, and as evident to his Majesty, and to all who had any Knowledge of the Court of Spain, and of the Secretary of Statey there and in Flanders, that how large Offers never the Spanish might make, they could not be able in any Time to pay any considerable Sum of Money; and that there would be so much Time spent in Contests between Madrid and Bragg before it could be dispatched, that the keeping it so long in his Majesty's Hands would be an insupportable Burthen to him, besides that, it seemed then probable that the Spanish would shortly declare himself an Enemy, for besides that he demanded Dunkirk as of right, so he likewise required the Restoration of Tanager and Jamaica upon the same Reason, and declared, that without it there could be no lasting Peace between England and Spain, and refused so much as to enter into a Treaty of Alliance with the King, before he would promise to make such a Restoration. There wanted not in this Conference and Debate the Consideration of the States of the United Provinces, as Persons here enough to declare the Pollution of Dunkirk, from whence they had formerly received so much Damage, and were too much to receive more whenever they should be engaged in any War; and it on Truth they had any such Desire, more Money might reasonably be required of them, and probably be obtained, than could be expected from either of the Kings. But upon Discussion of that Point, it did appear to every Man's Reason very manifest, that though they had rather that Dunkirk should be put into the Hand of the Spanish than delivered to France, or that it should be detained by the English, yet they durst not more to it into any such Pollution, which neither of the Kings would have approved of, and so it would have required them to the Displeasure, if not to the Hostility of both Crowns. Upon this full Deliberation, his Majesty inclined rather to give it up to France than to Spain; but deferred any positive Resolution till he had imposed the Matter to the Council-Board, where the Debate was again renewed, principally concerning the keeping or the partying with it, in which debate the Memory and Mention of what had been done in the House of Commons heretofore upon that Subject was not omitted, nor the Bill that they had sent up to the House of Peers for annexing it inseparably to the Crown; but after a long Debate of the whole Matter, there was no more said, above one Lord of the Council who offered his Advice to his Majesty against his partying with it, and the Grant of the Lord's dissenting was enough understood to have nothing of Publick in it. In conclusion, his Majesty resolved, for the Reason aforesaid, to put it into the Hands of France, if that King would fairly his Majesty's Expectation in the Money he would request for it.

Monfieur D'Estrades came privately over to treat upon it without any Character, but pretending to make it his Way for Holland, whither he was designed for Ambassador. After he had waited upon the King, his Majesty appointed four or five of the Lords of his Privy-Council (whereof I was required to be one) to treat with Monfieur D'Estrades upon the Sale of Dunkirk, and at that our first Conference, before, after we had in a modest Court to persuade him to make more Offer, we did demand the Sum of seven hundred thousand Pounds Sterling to be paid by the King of France for the Delivery of Dunkirk and Mardyke (which is always understood to be included when Dunkirk is mentioned) into his Possession. Which sum appeared to him so huge, that he seemed to think the Treaty at an end, and relived not to make any Offer at all on the Part of the King of France, and to the Conference broke up. At the next Meeting he offered three Millions of Livres, which, according to the common Account, amounted to three hundred thousand Pounds; which we as no more understood: So that any further Conference was discontinued till he had sent an Express or two into France, and till their Return, and afterwards, upon one infirm word which he thought too much, and his Offer of what we esteemed too little, the Treaty seemed to be at an end, and he preparing for his Return. In conclusion, his Majesty being fully as desirous to part with it, as the King of France could be to have it, it was agreed and concluded, that upon the Payment of five hundred thousand Pounds in Specie at Calais to such Persons as the King should appoint to receive it, his Majesty's Garrison of Dunkirk should be withdrawn, and that Place put into the Hands of the King of France: All which was executed accordingly; and I believe was a greater Sum of Money than was ever paid at one Payment by any Prince to Christendom, upon what Occasion soever. And that all this should not amount to a greater Value than the Ammunition, Artillery, and Stores were worth, which were delivered with it, is very strange, and cannot be supplied by any reasonable Computation. I do

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I do very well remember, that in the Treaty we did with much Rapacity and Recklessness inflict upon the degrading and enervating us to England the Cannon and other Artillery and Ammunition; but Monsieur D'Albion did not consent to it, it being, as he said, necessary for the Defence of the Place, which probably might be attacked by the Spaniards within few Days after it should be delivered into the Hands of the French; and upon our inferring that Exception of the Cannon and Ammunition in said Demand, he was at last induced to consent to the Payment of five hundred thousand Pistoles, which he had never before yielded unto; and when his Majesty plainly discerned that the King of France would in Truth give no more, and had caused some Librarians to be made of the Cannon and Ammunition, the Value whereof, as I remember, was not thought to am't to more than twenty thousand Pistoles sterling, or thereabouts, his Majesty refused to accept what was offered, for which I have not heard that he hath ever been sorry; and his Majesty did at the same Time refuse, and positively declare, that all the Money which should be received for *Dunkirk*, should be brought to, and deposited in the Tower of London, and so Part of it applied to any ordinary Occasions, but to be reserved for some pressing Accident, as an Intemperance, or the like, which was reasonably enough apprehended; and I presume it was all infused into his Majesty's Bladder, and at such Seasons, as his Majesty found necessary for such important Affairs, of the Particulars whereof I can say nothing. This is all I can say concerning the Sale of *Dunkirk*, and of my Part in that Transaction. To which I shall only add, that I aided that Part in it which I was obliged by my Duty to do, in Obedience to the King's Commands; and that before, or in, or after the Transaction, I never valued the Value of our Shilling for Reward, or Present, or any other Consideration relating to that Affair; and I believe the Treatment I have received since my coming into France is an unquestionable Evidence that that King did never take himself to be beholden to me for that, or any other Service, as in Truth he never was.

The Twelfth Article is, That I did utterly crush his Majesty's Letters Patents under a Great Seal of England (so we Dr. Crautcher) to be altered, and the said Letters Patents to be wholly raised.

When I first heard of this Charge, I could not comprehend what the Meaning of it was, being most assured that I had never caused any Alteration to be made in any of his Majesty's Letters Patents under the Great Seal, or the Infringement thereof to be raised; but upon Enquiry I was informed, that Dr. Crautcher, who was Chaplain to his Royal Highness the Duke of York, and had attended upon his Person during the whole Time that his Highness was beyond the Seas, upon his Majesty's Return into England, had obtained from the King his Royal Permission to the Passage of *Tenderloin* in the County of *Worcester*; which Permission, according to Custom, passed under the Great Seal of England, that when he brought his Address upon the Permission against the Intruder, who refused to give him Possession, and the Record was carried down to the Affairs in the Country, when the Doctor's Counsel was to open his Title, and thereupon was to produce the King's Permission, they found, upon Perusal thereof, that either by Misinformation, or Negligence of the Clerk, instead of the County of *Worcester*, where the Rectory was, the County of *Warwick* was inserted; upon which Mistake, the Doctor was necessitated to be mentioned; and thereupon he freely with me a Journey to London, to advise with his Counsel, and the most experienced Clerics, how to remove the Misfortune that had befallen him, and that his Majesty's Right might not be distressed by such an Oversight in the Clerk; and it seems he was by them advised, at the usual Way in Cases of that Nature, to petition the King, that in his Majesty's Presence, the Permission might be amended, and *Worcester* inserted instead of *Warwick*, and that thereupon the Great Seal might be again affixed to it, all which was done accordingly, as in such Cases is usual. And this is all I know of that Affair.

The Thirteenth Article, That I have, in an arbitrary Way, assumed and drawn into *Quodam* divers of his Majesty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties, determined thereof at the Council-Table, and stopped Proceedings at Law, and threatened Justice that should the Statute of 17 Car. 1.

I must here again lament my own Misfortune, that I am exposed to public Reproach under a general calumnious Charge, without offering any one Particular, to which I might answer my Defence. I have therefore no more to say, but that I am very innocent as to any Crime laid to my Charge in this Article; and I have been so far from examining and drawing into Question any of his Majesty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties, and determining the same at the Council-Table, and stopping Proceedings at Law, that I do not know or believe that any one Case of that Nature hath been ever determined there, at least when I have been present; I having always discomfited all such Addresses, and procured all Petitions of that Kind to be rejected as often as they have been tendered; and I take myself obliged to lay, for the vindication of his Majesty's Honour and Justice, that there have not been in many Years passed since the Enactment of the Council-Table, with its single Disfranchisement or Disquiet to the Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties, as hath been since his Majesty's happy Return, nor hath the arbitrary Course of Proceeding in Law been less obstructed.

The Fourteenth Article is, That I did cause *Quo Warrants* to be issued out against most of the Corporations of England by All of Parliament, and the same I might receive great Sums of Money from them for removing their Charters; which when they complied withal, I caused the said *Quo Warrants* to be discharged, and Proceedings therein to cease.

I never caused any *Quo Warrants* to issue out against any one Corporation in England, but by his Majesty's express Command, or by Order of the Board; which was always upon some Mismanagement or Misbehaviour in the Corporation: And I do not remember that I ever moved the King against any particular Corporation, but that of *Windsor*; and which my Duty to his Majesty obliged me to do, being intrusted by his Majesty with

the Command of his Horse and Pikes there, and being his Majesty's Secretary and his Honour and Master of *Windsor*, upon which the Borough had always depended. His Majesty having conferred that Charge upon me, I was no longer possessed of it by the Death of the late Earl of *Lindley*, who enjoyed that Place before, than I received a Petition from several Inhabitants and Burgesses of the Borough of *Windsor*, who complained that the Mayor and Juricks had lately procured their Charter to be renewed, without the Privy or Consent of the Borough; and that under Pretence of renewing it, they had procured many new Clauses to be inserted, and thereby reduced much of the Government, which before depended upon the whole Corporation, into their own Hands; and had thereby likewise procured a Piece of Ground, the Benefit whereof did formerly belong to all the Burgesses, and was usually applied to the Relief of such of them who were decayed in their Estates, to be now granted to the Mayor, and a select Number of the Juricks; and the Profit thereof to be at their Disposal, to the great Prejudice of the Borough and the Inhabitants thereof. I referred that Petition to Mr. Justice *Mordaunt*, who lived within four or five Miles of *Windsor*, and desired him to examine the Truth of these Allegations, and to certify me whether the Complaints were just and reasonable. Whereupon he took the Pains to go over to the Town, and confer with the Mayor and Juricks, and heard the Allegations of the Petitioners; and upon the whole Matter certified me, that the said four or five postal Alterations in the new Charter from that which was in the old, and from some Concessions; and at the same Time, Sir *William Fitzmaurice*, who is Ranger of the Parks, certified me, that since the renewing of this Charter, the Mayor and Juricks were not so good Neighbours to his Majesty's Game, as they had formerly been, and had withdrawn many of those services which they had used to perform; and that when any Trespassers were committed by those of the Borough upon his Majesty's Woods or Game, which happened very frequently, and Complaint was thereof made to the Mayor and Juricks, who had the sole Jurisdiction within the Borough, there was to fight and peremptory Examination thereof, that the Prosecutions were waived out, and no Justice could be obtained. It was my Duty to inform his Majesty of these Proceedings, who was much surprised thereat, and thereupon gave Direction to his Attorney General to bring a *Quo Warrant*, and to request that Charter which had been so unduly procured, and in which his Majesty had been so grossly deceived and abused; and I belov'd there was the left Vague used in the Production of that *Quo Warrant*, because the Mayor and Juricks, for some Time, pretended that they would forswear the said Charter, and receive a new one in such Manner as his Majesty thought fit, though they afterwards changed their Mind. And this is the only Charter which I gave Direction for the Production of, to the best of my Memory: Nor did I ever give Direction, upon the Receipt of any Money, to discharge any *Quo Warrant*, or cause the Prosecution thereupon to cease; nor did I ever receive the least Sum of Money for the granting or renewing any Charter, other than the usual Fees received for the same by the Clerk of the Hattage, and accounted to the Great Seal; which Fees, as I remember, amounts to thirteen Shillings and four Pence, or thereabouts.

The Fifteenth Article is, That I procured the Bills of Attainder for *John*, and removed great Sums of Money for the same, in a most corrupt and unbecomming Manner.

I do confess, if I have received the least Sum of Money for or upon the passing any Bills for the Attainder of *Ireland*, I have done the same in a most corrupt and unlawful Manner; nor need I have been so solicitous in procuring any of the said Bills to pass, or been more concerned in or for the passing them (except for his Majesty's Service, and the Publick Peace), than any other Counsellor present at those Debates hath been; but because this Assertion upon my Honour and my Honesty hath been by so much libelously continued by some Men, who very well know my Innocence in this Particular, and may yet have gained Credit with many upon the Credulity of bold Reporters; I do not know a better Way for my own entire Vindication, than to set down an entire Relation of all that hath passed by my Hand, or with my Privy, with reference to Ireland, since the Time of his Majesty's happy Return into England. When his Majesty issued, at his coming to *Windsor*, several Proclamations of Honour and Quality departed from *Ireland*, to tender the humble Duty, Obedience, and Submission of that Kingdom to his Majesty's Government and Subjection; the present Government of *Ireland*, at that Time, being constituted in a Military Way, by those who had the Command of that Part of the Army, which, upon the Revolution in England, had declared their Purpose and Resolution to return to his Majesty's Obedience; and there could not be too much Expedition used in settling it under those Laws, and that Form of Government it had been formerly accustomed to. Every Body remembers the Multiplicity of Business which was incumbent to at that Time, being to reduce his Three Kingdoms to that old Order and Form of Government which they might in Justice require, and which for so many Years had, by the Confusion of the late Civil War, been discontinued; and therefore it will not be much wondered at, that the Settlement of *Ireland* did not proceed with that Expedition as the distracted Interests of that Kingdom did require.

Within few Days after the King's Arrival at *Windsor*, the Commissioners or Deputies from *Ireland* (which I know not upon what other Name or Title to mention them) taking Notice of the Truth the King then reposed in me, (a genuine Trust God, and the King well knew, that I was in my Degree unworthy of it) addressed themselves to me, desiring that I would receive from them an Information of the present State and Condition of that Kingdom; which his Majesty had likewise commanded them to impart to me; and that I would assist them in procuring his Majesty's Favour, that as little Time might be lost as was possible, in endeavouring to settle and compose the distracted Condition of that Kingdom: And upon Conference with them, I quickly found that it was in a distracted Condition indeed, so hopelessly distracted, that I could not comprehend any practicable Way to compose it. There had been an Act of Parliament made in the Beginning of

the Rebellion for the Encouragement of Adventurers, that was, to encourage all Persons in giving in Money for the carrying on the War, upon the Alliance of having a Remission for their Money out of the forfeited Lands of those who were at fault in the Rebellion, according to an Edict of the Value by the said Act of Parliament, in which, for their better Security, there was likewise a Clause, that his Majesty should not grant a Pardon to any of those Rebels: And upon this Invitation many honourable Persons, and others, had brought in great Sums of Money for the carrying on that War, upon the Security aforesaid. But the Rebellion shortly breaking out in England, the Persons in Power in both Houses quickly violated that whole Act, by taking the Money raised, and lent for the Service of Ireland, without, and contrary to the Consent of those who lent it, and applying it for the Support of the Rebellion in England, and employed those Regiments of Horse and Foot, who were lent for Ireland, to fight against the King, under the Command of my Lord of Egger, and who did serve under his Command, at the Battle of Eger-Hill, where four of them, out of the Detachments of being to be employed into Ireland, quitted my Lord Egger's Arms, and went to the King. The Service of Ireland being thus negl'd, and to such a Degree that the Rebels there increased in Number and in Strength, many Persons of Honour in that Nation, who had contained themselves within their Obedience, and were in no Degree praiseworthy for their Infidelity and breaking out into Rebellion, found it now necessary for their own Preservation, to secure themselves in those Towns and Places which were possessed by the Rebels, and to join with them in these Counties, yet making still the Pretence of Duty to the King, and of an innocent Defect towards this Subjection, which many of them made good afterwards upon the first Opportunity. By this means the Rebels in Ireland advanced every Day in Power, and had several Armies in the several Provinces of the Kingdom, much superior in Power to the English Forces, whilst they were every Day diminished by their Want of Victuals, Want of Cloaths, and Want of Pay, which the Parliament neglected to supply them with, and the King could not. His late Majesty, after about a Year's Time that the Rebellion in England had been prosecuted against him, notwithstanding all Overtures of Accommodation, found it necessary to make a Cession to Ireland, which was after some Years transacted into a Peace, which though it was quickly afterwards most wickedly and perfidiously broken by the Irish to their own Destruction, yet many principal Persons of Honour and good Fortune adhered afterwards constantly to the King, without any Intermission from their Allegiance; and such Men believed the full Benefit of that Peace, as being thrust to their Estates which did no Justice belong to them, and expected the same accordingly.

After the Murder of his late Majesty, the King that now is receiving an Address from his Roman Catholic Subjects in Ireland, with great Acknowledgements of their past Crimes and Errors, and of ample Prolifications of their Duty and Obedience for the Time to come, during the Time of his being in France, I sent the Lord Marquis of Ormonde into Ireland as his Lieutenant of that Kingdom, and with Authority to make such Concessions to his Roman Catholic Subjects as might unite them to his Obedience; and that thereby such an Union might likewise be made between his English and Irish Subjects, the Lord Marquis having noticed the whole Province of Munster, and the Army, and Gentlemen to make, to make Profession of Fidelity to their King, that Dublin might quickly be recovered, which was the only considerable Place that then continued in Rebellion, and in which there were very many of known Affections to the King, who would quickly have rendered that City to the Lord Lieutenant, if a great Supply from the Parliament, immediately after the Murder of the late King, had not unhappily arrived the very Day or two before the Marquis of Ormonde marched with his Army to recover Dublin, and within very few Weeks after, Ormonde himself landed there with a great Army of Horse and Foot, and all Provisions necessary for the Support and Maintenance of it.

It is not necessary in this Place, and upon this Occasion, to mention what befel that unhappy Kingdom after Ormonde's Arrival there; the quick and speedy Reduction of Towns and Garrisons, the dissolving and dismissing of the Troops and Army under the Command of the Lord Lieutenant, and he being forced to withdraw himself out of the Kingdom, and to return into France; which, although it proceeded from the miserable and foolish Jealousies of the Irish, and then from their Treachery and Perfidiousness, yet those Crimes did not cover the whole Nation; yet there remained still very many Persons of Honour and Quality, who never after were false to his Majesty, and therefore respected the Oath of the late Peace, without any Intermission from his Majesty that now is, as of Justice belonging to them; and many of this Condition (some whereof had ever been in Arms against the Crown, but had faithfully served his Majesty's Army in England during the whole Rebellion) transported themselves to his Majesty by beyond the Seas, and many others were taken and put to Death in Ireland.

After all Opposition to the Parliament was totally suppressed in Ireland, and the Kingdom entirely at their Devotion, they began then to think of executing the Act of Parliament of the Seventeenth Year of the late King, for Satisfaction of the Adventurers. But as they had from the Beginning violated that Act, by the multiplying the Debt and the Money, as aforesaid, so they now preferred the gratifying and rewarding, and paying the Arrears due to the Officers and Soldiers, by assigning them the Portions of the Lands which they called forfeited, before they did any Thing for Satisfaction of the Adventurers, except such only who for some other Motive or Interest had a Title to those Vacancies; and amongst the forfeited Lands they reckoned all that which belonged to the Church, to the Marquis of Ormonde, the Lord Inchiquin, and all those who had adhered to the King, and constantly opposed the Rebels there, as Part, and distributed the same accordingly. So that at this Time, when the Commissioners for that King were assisted by his Majesty, the Officers and Soldiers of the Army, and some Adventurers, were and had been in quiet Possession for many Years of all the Church-Lands, of all the Marquis of Ormonde's Lands, and the Lands of all other his Majesty's faithful Friends and Ser-

vants; and yet there remained a general Complaint amongst the Adventurers, that they were in no degree satisfied what was due to them upon their Adventures by the Act of Parliament, and desired the King that they might receive what was their Due.

Ormonde had not exercised such a Severity as to eradicate the whole Irish Nation; but had transplanted them with so great Rigour out of the other Provinces into the Province of Connaught, that there was scarce left one Irish Family out of Connaught, where the Ulster had assigned them severally such Portions as he thought reasonable enough for the small Possessions he had formerly taken out of their own Estates, in those Places where their Fortunes had lain: And to this Transplantation there had been forced to give their Consent, having had nothing in their Election but either to accept their Assignations, or to have nothing to live upon in any other Place. But now, upon his Majesty's Return, as well this Men who had been transplanted thither out of other Provinces, as those upon whose Lands the other were transplanted as foremen to the State, were now Strangers to the King, that every one might be refused to his own, and that their past Crimes might be expiated by their extreme Sufferings they had endured for many Years; and that those Men who had been as deep in Rebellion as themselves, and continued much longer, and prospered better so on, might not be gratified and rewarded with that Honour and Fortune.

Many Persons of Honour and Reputation, as is said before, had repaired to the King whilst he was beyond the Seas, and followed and attended him there, many Regiments had been raised and transported with the Consent and Approbation of Ormonde, for the Service of the two Crowns of France and Spain, and many of those Officers had served his Majesty from the Beginning, and had never been in Rebellion, and upon his Majesty's Command, as soon as he was in Ireland, brought their Troops more over thither to serve as he should direct: and as the King had kept Intelligence always with many of his well-affected Subjects in England and in Scotland, he had likewise done with some in Ireland, to the End that they might be ready to make use of the first Opportunity that should be offered by any Divisions in the Army, or other Conjunctions, to join with those who were most forward to advance the King's Retitution; which many considerable Men there had promised to do, and in such Seasons could have rendered themselves very useful, and all these Men had some Pretence to the King's Favour, and an Expectation to be rewarded, at least, to meet Part of their Estate.

This was the perplexed State of that Kingdom when the King returned into England, and when the Commissioners attended the Majesty, and consulted with me, when I protested to them that there were too many Intricacies in the Business, and the whole Kingdom involved in so many contradictory Titles and Interests, that I knew not what Counsel to give, or what to propose, but that I would in public Council give the best Advice and Assistance I could for the settling that Kingdom, when they should make any such Proposition to his Majesty as were practicable. That which was first to be done, and which could only make all other Expedients so practicable, was the settling the Government in such a Form, and by such Rules, as the Kingdom had been accustomed to before the Troubles, and that the Courts and Court of Justice might be opened. Then the Commissioners, themselves proposed, as the first Work incumbent upon his Majesty, in Piety, Honour and Justice, that all such to whom the Lands of the Church, the Lands of the Marquis of Ormonde, and of all his Majesty's Friends who had been faithful to him, should be forthwith removed, that the right Owners might immediately be put in Possession of what in Right belonged to them, which was the more easily to be done, because much of those Lands remained undisposed of, and reserved for Ormonde himself, and much of the rest had been assigned to those Officers who had been the King's Mercenaries; and to those Lands were to be lost from all other Title or Pretence, but what the King himself could make. But then there was great Caution and Order to be observed, lest to assign other Recompense to those who were possessed (how erroneously soever) of any Lands, either as Adventurers upon the Statute, or as Soldiers, for the full Arrears of their Pay; and his Majesty had declared before his coming into England, there should be Satisfaction given to all such Persons; and the Truth is, the whole Kingdom of Ireland was at that Time so much possessed by the Adventurers and Soldiers, that it was thought very necessary in Point of Prudence, to remove some out of Possession of what had been formerly assigned to them, and according to the Rules of that Time, until future other Lands were assigned to them, which was not difficult to be done. Then the Commissioners, observing how much his Majesty was concerned for many of those who had served him beyond the Seas, and for such others who claimed the Benefit of the first and second Truce, understood that his Majesty should not be prejudiced in any of those Particulars, but that all his Persons should be preferred, and their Estates secured; and thereupon a Petition was prepared, containing those Provisions which were approved by the Commissioners, who understood to have such a Bill transcribed as might be the Foundation for a good Settlement, and in which his Majesty might make such Alterations as he did think fit.

There were many Difficulties appeared in settling the Government that were at first apprehended, and nothing was so necessary as sending over the King's Commission, which might determine all other Authorities of Committees and Officers, in which Idea had been steeled by a Common Consent, or rather by the Prevalence of a Party, which already grew into Factions and Contentions. The General who had contributed so much to the King's Restoration, and appeared very zealous for the Advancement of his Service, had been by the Parliament and Council of State (as they called them) declared and created General of all the Forces in the three Kingdoms, and John O'Brien had been chosen, as well in Scotland and Ireland, as in England, before his Majesty's Return, and the King did not think fit in any degree to lessen his Trust and Authority, nor had the General any Inclination to part with his Power in Ireland, where he had procured a great Estate, and could best secure it under his own Authority, and yet be refused not to go thither, and indeed his Presence there, about the King, was thought very necessary. Hereupon the King de-

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clared, that he would make the Lord Roberts Deputy of Ireland, who was willing to receive that Charge, knowing, at the same Time, that the Duke of Albemarle was to continue Lieutenant of that Kingdom. But these quickly arose false Differences between the General and the Lord Roberts, about the drawing their Commissions, the latter being so scrupulous and nice in having the least Dependence upon the General, though Lord Lieutenant, and his Pride and Morosity was such towards the Commissioners of Ireland, that they withdrew themselves from giving him further Attendance and Information; so that his Majesty quickly discerned, that though he was a Man of great Parts and Knowledge, yet his Nature and Temper was not fit for that Employment, and therefore resolved for the present to put the Government into the Hands of three Lords Justices, the Lord Chancellor of that Kingdom, the Earl of Mordaunt, and the Earl of Ormonde, who might begin to reduce the Government into some Order, until his Majesty could take a further Resolution for the Establishment of it.

As soon as a Bill was transmitted, according to the usual Course, to his Majesty, for the Settlement of Ireland, with such a Preamble as is before mentioned, though the Body of the Bill did not in Truth correspond with it; his Majesty gave Direction, that it should be shewed and exposed to those of the several Estates, even to the Irish themselves, who were the most likely to receive Prejudice from it: And after a sufficient Time allowed for every Man's Consideration, his Majesty appointed a Trust to have it read in the House, and to hear what Objections could be made against it. The great Debate then was upon the Preamble of the Bill, who appeared with marvellous Confidence, and complained, that by that Act then prepared, and under Consideration, the whole Irish Nation would be extinguished, all their Estates being thereby taken from them. As the present Government in Ireland, which had declared for the King, had lost over Commissioners or Deputies to attend his Majesty, and know his Pleasure, as is mentioned before; so the Body of Adventurers had likewise chosen free Persons to present their Grievances and Petitions; and the Irish, under the Names of the *Roman Catholics of Ireland*, had likewise chosen others to appear on their Behalf, whereas some were Lawyers and Men of good Parts, who will know all the Trauculations in Ireland, from the Beginning of the Rebellion, throughout all the Changes of Government. The chief Arguments they urged for themselves were, First, Their long and great Sufferings, the Loss of their Estates for Five or Six-and-Twenty Years, the working and spending of the whole Nation in Battles, and in Transportation of Men into the Parts beyond the Seas; whether, as I remember, they reckoned above Twenty Thousand Men to be transported out of that Kingdom in Four or Five Years; the great Numbers which had been executed and massacred after his Majesty's Government had been forced from thence; the great Numbers which had perished by Famine and the Plague; that two great Judgements having raged over the Kingdom for two or three Years, and at last the transcribing the small Remains of the Nation into the Governor of the Province of Connaught, where yet much of the Land was taken from them, which had been assigned to them with all those Formalities of Law which were practised under that Government. Secondly, They demanded the Benefits of the two Treaties of Peace, the one in the late King's Time, and the other confirmed by his Majesty that now is; by both which they had indemnified for all Acts done by them in the Rebellion; and indited upon their Innocence since that Time, and that they had pursued all Ways that were in their Power to manifest their Affection to his Majesty, and to secure an Obedience to his Commands which he was beyond the Seas, that they detested themselves as, and withdrew themselves from, the Service of France or Spain, in fact, inasmuch as his Majesty himself was the Pleader that should be. Thirdly, They urged, and forced, with a little more Liberty and Indifference than became them in that Conjunction, the Unworthiness and Incapacity of those who for so many Years had possessed themselves of their Estates, and fought now a Confirmation of their rebellious Title from his Majesty: That their Rebellion had been more infamous, and of a greater Magnitude than that of the Irish; who had risen in Arms to free themselves from the Rigour and Severity that was exercised upon them by some of the King's Ministers, and for the Liberty of their Conscience and Practice of their Religion, without having the least Intention or Thought of withdrawing themselves from his Majesty's Obedience, or declining his Majesty's Government: Whereas, the others, when they carried on an open Rebellion against his Majesty's Sacred Person, when they had horribly murdered in the Sight of the Sun, with all imaginable Circumstances of Contempt and Deniance, and as much as in they lay, had rooted out Monarchy itself, and overturned and destroyed the whole Government of Church and State; and therefore that whatever Punishment the poor Irish had deserved for their former Transgression, which they have to long since repented of, and departed from the Rebellion when they had Arms and strong Towers in their Hands, and put themselves again under his Majesty's Protection; this Part of the English, who were possessed of their Estates, had broken all their Obligations to God and the King, and so could not merit to be granted with their Ruin and total Destruction. That it was too evident and notorious to the World, that his Majesty's Three Kingdoms had been very faulty to him, and withdrawn themselves from his Government, by which he had been compelled to live in Exile for many Years; and yet, that upon their Return to their Duty and Obedience, his Majesty had been graciously pleased to grant a free and general Pardon, and Act of Indemnity, in which many were comprehended who had in Truth been the Contrivers and Fomenters of all the Mischief and Defolation which had involved the Three Nations for so many Years; and therefore they hoped, that when all his Majesty's other Subjects (as criminal at least as the others) were, by his Majesty's Clemency, restored to their own Estates which had been seized, were in full Peace, and Mirth and Joy, the poor Irish alone should not be totally exempt from all his Majesty's Grace, and left in Tears and Mourning, and Lamentation, and be sacrificed without Redemption to the Avarice and

Cruelty of those, who had not only spoiled and oppressed them, but had done all that was in their Power, and with all the Indulgence imaginable, to defray his Majesty himself, and his Posterity, and who now returns to their Obedience, and submitted to his Government, when they were no longer able to oppose it; nor did they yet return to it with that Joy and Alacrity, and Relinquishment as the Irish did, and desired to do. And to conclude with those pathetic Applications and Appeals to his Majesty, as Men well versed in Discourses of that Nature are accustomed to do.

This Discourse carried on, and urged with more Passion, Vehemence and Indignation, than was suitable to the Condition they were in, and in which, and the Excellency of their Rhetoric, they had let fall many Expressions very indelicate and unwarrantable, and in some of them confidently asserted, if not justified their first Entrance into Rebellion, (the most barbarous, certainly, and unexcusable, that any Christians have been engaged in, in any Age,) they intercalated themselves to many who had Compassion enough for them, and gave their immediate Adversaries (who stood upon the Advantage Ground) both Provocation and Opportunity to lay many Things to their Reproach, which probably would else have been forbore. They enlarged upon all the odious Circumstances of the first Year of the Rebellion, the most horrid of above a Hundred Thousand Persons in cold Blood, and with all the Barbarity imaginable, which Murders and Barbarities had been always excepted from Pardon: And they told them, that if these were not some amongst themselves that then appeared, they were sure there would be many found amongst those for whom they appeared, who would be found guilty of those odious Crimes, which were excluded from any Benefit by those Treaties. And so that first Agitation being his Majesty vented itself in so much Bitterness and Animosity on both Sides, that his Majesty thought it best to conclude it with such Reprehensions and Annals, as might dispose them to a better Temper when they should be next admitted to his Majesty's Presence.

At their next Attendance upon his Majesty, which was within few Days after, the Commissioners for the Protestants, taking Notice of what the other Party had alledged for their Defence, the Protest that they had to the two Acts of Pacification, and their exulting their own Innocence from that Time, and their great Affection for his Majesty's Service, declared, that whatever legal Title the Adventurers had to the Lands they were in Possession of, many of whom had always doubtfully served the King, yet they would be content, that all those who had in Truth preserved their Integrity towards his Majesty from the Time of either or both the Pacifications, and not swayed afterwards from their Allegiance, should partake of his Majesty's Grace, and Royal Bounty, in such a Manner, and so such a Degree, as his Majesty thought fit to exercise towards them. But they were confident they should make it appear, that their Promises to that Grace and Favour were not founded upon any reasonable Title, that they had never consented to any one Act of Pacification, in which the Loss they had been assured, which they had not waited and broken through, but Ten Days after, they returned to all their Acts of Disaffection and Rebellion, that after the first Act of Pacification, ratified by the late King, in very few Days after they treated the Herald, his Majesty's Officer, who came to proclaim that Peace, with all manner of Indignity, tearing his Coat of Arms (the King's Arms) from off his Back, and beat and wounded him so, that he was hardly rescued from the Loss of his Life; that about the same time they endeavoured to surprise and murder the Lord Lieutenant, and pursued him to Drogheda, which they forthwith besieged with their Army, under the Command of the General who had signed the Peace; they imposed their Commissioners who were authorised by them, for consenting to those Articles which themselves had confirmed, and so professed the War with as much Alacrity as ever; and refused to give that Aid and Assistance they were obliged to, for the Recovery and Restoration of his late Majesty, who was then in Prison at the Isle of Wight; the Promise and Expedition of which Supply and Assistance, was the sole Ground and Consideration of that Treaty, and of the Conditions therein made to them; that they thereupon renounced their Obedience to his Majesty, and put themselves under the Protection and Disposal of Riomond, the Pope's Nuncio, whom they made their Generals of all their Armies, their Admiral at Sea, and to preside in all their Councils. After their Divisions amongst themselves, and the Burden of the Tyranny they suffered under, had disposed them to justify this King, who was then in France, to receive them into his Protection, and to send the Marquis of Ormonde over again into Ireland to command them, and his Majesty was so far provoked with, as to send the Marquis of Ormonde into Exile, with such a Supply of Arms and Ammunition as he could procure; where the Lord Inchiquin, Lord President of that Province, with the Protestant Army, received and joined with him; and shortly after, the Confederates Irish made that second Treaty of Pacification, of which they now likewise demanded the Benefit: But that it is notoriously known, that they no sooner made that Treaty than they broke it, in not bringing in those Supplies of Men and Money which they were obliged to do, and the Want wherein exposed the Lord Lieutenant to many Difficulties; and he had no sooner undergone the first Misfortune before Drogheda, than they withdrew from taking any further Care of the Kingdom, raised Scandals upon, and Jealousies of the whole Body of the English; who, being so provoked, would no longer venture themselves in any Action or Conjunction with the Irish. They called an Assembly or Convention of the Clergy to meet without the Lord Lieutenant's Authority, and put the Government of all Things into their Hands; who, in a short Time, imposed the Jealousy in the Minds of the People towards the few Protestants who yet remained in the Army, and who had served the King with all imaginable Courage and Fidelity, from the very first Hour of the Rebellion in the Three Kingdoms, to that degree, that the Marquis was even compelled to disband his own Troop of Guards of Horse, consisting of such Officers and Gentlemen as are mentioned before, and to trust himself, and all his remaining Town and Garrison, to the Fidelity of the Irish; promising, that upon such a

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Confidence the whole Nation would be raised, as did Men, to his Majesty's Service, under the Command of the said Marquis: But they had no former received Satisfaction in that Particular, (which was not in the Marquis's Power to refuse to give them,) but that they raised several Commissions, against the Marquis himself, and declared against his Religion, and inhibited the People upon Pain of Excommunication, not to submit to this or that Order signified by the Marquis; and, upon the Matter, inhibited any Obedience they paid to him: Instead of raising new Forces, that they were raised run from their Colonies and dispersed themselves; they who were troubled with the keeping of Towns and Forts, either gave them up by Treachery to Cromwell, or left them through Cowardice to him upon very feeble Attacks: Their Great General Ous O Nelly had made a formal Council and Signification with the Parliament; and in the End, when they had divided the Marquis of all Power to oppose the Enemy, and gave him great Cause to believe his Person to be in great Danger to be betrayed, and delivered up to the Enemy, they volunteered to petition him as deare out of the Kingdom, which they could easily compel him to do, so that he would leave his Majesty's Authority in the Hands of one of his Majesty's Roman Catholic Subjects, to whom they promised to submit with the most punctual Obedience. Whereupon the Marquis, finding that he could not unite them in any one Action worthy of the Duty of good Subjects, or of prudent Men towards their own Preservation, and so, that his Resistance amongst them longer could in no Degree contribute to his Majesty's Service or Honour, and that they would make it be believed that if he would have committed the Command into the Hands of a Roman Catholic, they would have been able to have possessed those Towns which still remained in their Possession, which were Lincoln and Colchester, and some other Places of less Importance, and likewise by Degrees recover from the Enemy what had been lost; which was very possible for them to have done, having great Bodies of Men to perform any Enterprize, and some good Officers to lead them, if they would have been obedient to any Command: Whereupon the Marquis had resolved to gratify them, in placing the Command in such a Person's Hand, whose Zeal for the Catholic Religion was unquestionable, and whose Fidelity to the King, and entire Affection, was unblemished; and to make Choice of the Marquis of Gloucester, a Name, the of an English Extraction, had for so many Hundred Years resided in that Kingdom, and had the greatest Favour amongst them, that he had the Reputation of being of the best Family of the Irish, and whose Family had, in all former Rebellions, as well as in this, professed their Loyalty unto the Crown. The Roman Catholics of all Kinds perceived as least a wonderful Joy at this Election, acknowledged it a great Obligation to the Lord Lieutenant for making it, and applied themselves to the other with all Profusion of Duty and Submission, to induce him to accept the Charge, when indeed knew them too well to be willing to trust them; yet upon the Marquis of Cromwell's earnest and solemn Entreaty, and out of his great Zeal for his Majesty's Service, and to support his Government there, until his Majesty could procure other Supplies, or give better Orders for doing it, he was contented to receive such Commission from the Lord Lieutenant, and gave necessary for the Execution of that Commission, and Privilege of the Government. Upon which the Marquis of Cromwell embarked himself, with some few Friends and Servants, upon a little Pinn that was bound for France, where he arrived safely about the Time that his Majesty transported himself thither, when his miraculous Escape from Wexford.

The Lord Lieutenant was no sooner gone, but that the Marquis of Gloucester, the new Lord Deputy, found himself no better treated than the Lord of Cromwell had been: That Part of the Clergy which had continually opposed the Lord Lieutenant for being a Protestant, were now as fully satisfied with the Deputy's Religion, and as violently opposed all his Orders, and visited their own Protestants, and quickly made it evident, that his Affection and Loyalty to the King was that which they disliked, and a Cause that could not be weighed down by the undoubted Sincerity of his Religion. They entered into secret Correspondence with the Enemy, and Conspiracies between themselves; and though there were some Persons of Honour and Quality with the Deputy, who were very faithful to him and to the King, yet there were so many about him of another Ality, that all his Councils, Resolutions, and Delights, were soon enough discovered to the Enemy to be prevented; and though some of the Letters were intercepted, and the Persons discovered who gave the Intelligence, he had not Power enough to bring them to Justice, but being commonly Friends and Clergymen, the Privilege of the Church was profusely insisted upon, and so they were rescued from the secular Prosecution and their Effects were contrived. That perfidious and treacherous Party had so great an Interest in all the Towns, Forts, and Garrisons, which yet pretended to be subject to the Deputy, that all his Orders were still contradicted or neglected; and the Enemy no sooner appeared before any Place, but some Faction in the Towns caused it to be delivered up and rendered. Nor could this fatal Southsides be informed even by the Severity and Rigour which the English exercised upon them; who, by the wonderful Judgment of God Almighty, always executed those Men who put themselves and the Towns into their Hands, finding them to have had some barbarous Part in the foul Murders which had been committed in the Beginning of the Rebellion, and who had been, by all the Acts of Grace granted by the several Powers, still relieved for Justice: And of this Kind there were so many Inhabitants in about Lime-ox and Galway, that they desired to be collected and mentioned in a Discourse by itself, to observe and magnify the wonderful Providence of God Almighty, in bringing heinous Crimes to Light and Punishment in this World, by Means unperceived by the Guilty; inasmuch, as there was scarce a Person of the Clergy or Laity, who had had a single Hand in the contriving and forwarding the first Rebellion, and in the Perpetration of those horrible Murders, who had obstructed all Overtures towards Peace, and caused Peace to be broken as soon as made; who had adhered to the Enemy, and endeavoured most maliciously to exclude the King and his Royal Authority from the Dominions of Ireland. I say, there was scarce a Man very notorious, and con-

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not in Transgressions of this Kind, who did not by some Act of Treachery try full Endeavour to merit from the English, and by that, or by some other Means, fall into their Hands, and were by them publicly and reproachfully executed and put to Death.

This being the sad Condition the Lord Deputy was in, and the Irish Party having without his Leave, and against his express Command, taken upon themselves to send Messengers into Flanders, to desire the Duke of Lorraine to take them into his Protection, offering to deliver several important Places and Sea-Towns into his Possession, and to become his Subjects; upon which Intimation the Duke sent over an Ambassador and a good Sum of Money for their present Relief: The Deputy was at a short Time reduced to those Straits, that he durst not remain in any Town, nor even in his own House for three Days together, but was forced for his Security to shift from Place to Place, and sometimes to lodge in the Woods and Fields in cold and wet Nights, by which he contracted those Indisorders and Debilities which shortly after brought him to his Grave; and, as the End, he was compelled to accept a Pardon from the English, who had a Reverence to his Person and unspotted Reputation, to transport himself into England, where his Wife and Family were, and where he died before he could procure Means to carry himself to the King, which he always intended to do.

When the English Commissioners had enlarged themselves with these Considerations in this Narrative and Discourse, they again provoked the Irish Commissioners to continue one Person amongst themselves, or those for whom they appeared, who they believed could in Justice demand his Majesty's Favour; and if they could not make it evidently appear, that he had forfeited all his Title to Pardon after the Treachery, and that he had again been as faulty to the King as before, they would be very willing he should be made the Object of the King's Grace and Bounty, and be restored to his Estate. And then applying themselves to his Majesty, with great Duty and Submission, they concluded, that if any Persons had, by their faithful and secret Services, or by their Attendance upon his Majesty, rendered themselves grateful to him, and worthy of his Royal Favour, they were very willing that his Majesty should restore all, or any of them to their Honours and Estates, in such Manner as his Majesty in his Wisdom should think fit, and against all Impediments whatsoever. And hereafter several Acts of Parliament were passed, for the Indemnity and the relieving several Persons of Honour and Estate to take Estates who either in Judgement could not be the same, as having been always faithful to the Crown, and suffered with us, and for it; or who had for merited their Affliction and Duty for his Majesty, that he thought fit in that Consideration to wipe out the Memory of whatsoever had been formerly done against: And by this Means many were in a short Time put into a full Possession of their Estates, to which they could make a good Pretence at the Time when the Rebellion began.

The Consideration and Debate about the Settlement of Ireland, upon the Bill proposed, took up many many Days, his Majesty being always present, and in which there arose every Day new Difficulties. It appeared plainly enough, that the Cause was in general, that if the Letter of the Act of Parliament of the Sixteenth Year of the Late King were strictly pursued, almost an Extirpation of the whole Nation would follow, and which at best would be very miserable. Then the Transplantation into Connaught had been added, and finished so many Years before (which was very probably done in Point of Government, in respect of the untidy Humour of that People, and their natural Inclination to rebel, if the same had been executed by any Rules of Justice), and the Soldiers and Adventurers had been likewise for many Years in the Possession of their Lands, and had had so much Money in building and planning, that if his Majesty had restored all that had been done, and taken those Advantages upon themselves, Miscontents and Misapprehensions might have been raised, the whole Foundation upon which all the Hopes rested of pacified that Kingdom without their Obedience to the Crown of England must have been shaken, and even dissolved. And then the Memory of the Beginning of the Rebellion in Ireland (how many other Rebellions sooner had followed it, as bad or worse in respect of the Consequences that attended them) was as fresh and as odious to the whole People of England, as it had been the first Year, and the whole Nation upon the Matter (though there were many Persons of it of great Honour and Virtue) was fallen into that Complaint, that they feared indeed in the Eyes of Christendom worthy of the mildest Execution they were not to: And so down it was a Consideration that reformingly made them choose a Person worthy of extraordinary Favour and Compassion, that when both the other Nations had made many noble Attempts for redeeming their Liberty, and for the Restoration of his Majesty (for Ireland still had done much towards it), and his present Restoration was by God's Blessing, and only with his Blessing, the sole Effect of the Courage and Affection of his own Subjects; so that England and Ireland had in a great Degree redeemed, and even undone what had before been done against; and his Majesty had approved and secured those Afflictions to them, by their Promises and Concessions which he was in Justice obliged to perform: But the miserable Irish alone had no Part in the Benefit his Majesty had received, nor had God suffered them to be the least Influencers in bringing his good Providence to pass, or to give any Testimony of their Repentance for the Wickedness they had wrought, or of their Resolutions to be hence Subjects for the future. Is that they found as a People left out and exempted from any Benefit from that blessed Conjunction in his Majesty's Restoration: And this Disadvantage was imputed towards them by their frequent Malignity of an inveterate Animosity against the English Nation and English Government; which again was recompensed to them by an unextinguishable Jealousy of all the English towards them, declaring plainly, that they could be no longer secure of any thing they had, or should have in Ireland, than it should evidently appear that it was not in the Power of the Irish to take it from them, and to this Conclusion their present Confidence and Impudence contributed very much: And it appeared plainly enough, that they expected the same Conditions (which the Necessity of that Time had made fit to be granted to them) in respect of their

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their Religion, and Liberty of Conscience, as they called it, should be now likewise confirmed, without which all other Graces would not be sufficient to constrain them within the Limits of Subjection. This State and Condition of Affairs, and the Temper of the People, made it very necessary to the King to be very wary in dispensing his ordinary Favour (which his natural, merciful Inclination prompted him to) to the *Irish*, and in the Alterations which Justice obliged him to make in that Kingdom, that the Manner of it should make it appear, that it was the particular Justice in a particular Case, which could not be attended with a Consequence prejudicial to any general Interest.

There appeared in this Debate an Intention in the Soldiers and Adventurers, who were to have great Conscience and Approbation in the Bill now under Examination, to destroy all Estates and Settlements at Law upon Consideration of Marriage, or any other Contracts which had been made before the Rebellion; nor had there been in the whole former Proceedings, in the Time of the Disruption, any Consideration taken of Mortgages or Debts due by Statute or Recognition, or upon any other Security, so that all such Debts must be either left to the Proprietors, or must fall with the Interest upon the Land, whosoever had enjoyed the Benefit or the Profit thereof: All which formed very unreasonable and unjust, and that such Estates should remain fortified by the Treason of the Father, who had been only Tenant for Life, against all Defences and legal Titles of Innocent Children, and of which on all legal Attenders the Crown never had or could receive any Benefit. Yet, how unreasonable former these Pretences appeared to be, the Rule and Discretion for the Remedy thereof were not very easy; the English declaring, that if such Titles were preferred and allowed to be good, there would not in that universal Guilt which upon the Matter comprehended and ascribed the whole *Irish* Nation, there would not be one Estate safe from Treason, but Estates and other civil Concessions would be forged to defend and secure the same; nor would there be Witnesses wanting to justify and prove whosoever their Evidence could be applied to: And at such Trials were to be by the known Rules and Customs of the Law in Cases of the like Nature, there was too much Reason to suspect and fear that these would be little Justice done, since a Jury of *Irish* would be sure to find against the English; and there was as much Reason to apprehend that the English would bring in their Verdict against the *Irish*, let the Evidence on either Side be what it would. However, the King was in no degree inclined, upon any Suggestions, to countenance such a baseless Violation of the Law by any Declaration in the Act; and after many Alterations, Amendments, and these resulting still in many Difficulties and Intoxications, he foresaw that all Matters were not yet so closely stated, that the Settlement could be made by this Bill; but that such Preparations might be made towards it, and such Examinations taken, and some Particulars settled and adjusted, and what remained stated with more Clearness for his Majesty's Determination, he passed the said Act at Parliament, and committed the Execution thereof to too many Commissioners, nominated to his Majesty by those who were most conversant in the Affairs of *Ireland*; nor, or very few of which were known to his Majesty, or to any of those who had been so many Years from their Country, in their constant Attendance upon his Majesty's Person beyond the Sea. And upon this Conjunction, and the Dispatch, the Commissioners from *Ireland* of all kinds returned thither, the Earl of *Ormy* being one of the three Justices who were entrusted with the Government.

After a Year spent in the Execution of this Commission, there was very little done towards the settling the Kingdom; but, on the contrary, the Breaches were made wider, and so much Passion and Injustice flowed, that Complaints were brought to his Majesty from all Parts of the Kingdom, and from all Persons in Authority. The Number of the Commissioners were so great, and their Interest so different, that they made no Dispatch, very many of them were in Possession of such Lands which others sued for, and sought the broken Tithes and Portions of others for themselves; many of Money, which they supposed and made good by their own Authority; and those Men, who had their own particular Concernment chiefly to maintain, attended the Service very negligently: The few who were more indifferent, by having no Interest of their own at stake, were weary of their Attendance and Expence (there being no Allowance for their Pains), and offended at the Partiality and Injustice they saw practised, withdrew themselves, and would be no longer present at those Transactions, which they could not regulate or reform: All Interests were equally offended and ascended; and the Soldiers and Adventurers complained on both of the Corruption and Injustice done the *Irish* side, so that the Lords Justices and Council found it necessary to transmit another Bill to his Majesty, which as I remember they called an *Explanatory* Bill, for the better Understanding by which they had provided, that no Person who lived in *Ireland*, or had any Pretence to an Estate there, should be employed as a Commissioner; but that his Majesty should be desired to send over a competent Number of well-qualified Persons out of England to attend that Service; upon whom a fit Salary should be settled by the Bill, and such Rules set down as might direct and govern the Manner of their Proceedings; an Oath being likewise included in the Bill which the Commissioners were to take for the impartial Administration of Justice. And for the Prosecution of this new transmitted Act, several Persons were sent over to attend, and inform his Majesty and the Council upon any Difficulties or Scruples that might arise upon the several Claims and Pretences which were made.

The second Act took as much Time as the former; all that had been said in the former Debate being again repeated, and almost with the same Passion and Impertinence, the *Irish* making large Observations upon the Proceedings of the late Commissioners, to justify those Fears and Apprehensions they had formerly expressed. And there is too much Reason to believe, that their greatest Design now was rather to keep off any Settlement, than that they hoped to procure for it some such delay, relying more to that they Account from a general Dissatisfaction, and the Diffusion and Confusion which was like to attend it, than from any

Determination that was like to be given in their Favour: Which yet they did not despair of, as well by some Promises their Friends at Court had made to them, upon great Promises made first by them, as well as for the Prejudice they found was generally conceived against those of the Soldiers, and many of the Adventurers, who were like to gain most upon the Division. And though the *Irish* were in general Great and Desperate for the Reclaiming of *Ireland*, yet there were many particular Men, both of the Soldiers and Adventurers, who, in respect of many Concessions and Approbations Admitted against the Crown throughout their whole Employment, were as little satisfied with this Revolution as any Men could be, and were so universally odious both in England and *Ireland*, that if the King's Justice could have been observed, and then particular Cases feared from the rest, without Violation of the Rule which feared the rest, any thing that could have been done to their Detriment would have been grateful enough. However, after a very tedious Debate his Majesty being assured by those who were thought to understand *Ireland* very exactly, and upon the Surveys which had been taken of *Ireland* with great Partisanship, undertook that there was Land enough to satisfy all the Soldiers and Adventurers, and that there would be enough left for the Accommodation of the *Irish* in a liberal Proportion; and having given some Rules likewise and Limitations to the immoderate Pretences and Demands of the Soldiers and Adventurers upon the Dublin Oath, and imperfect Advertisements and four other Irregularities which in the Execution of the former Commission they had lodged to themselves, his Majesty likewise dispatched the 4th and 5th Bill.

Whilst this second Bill was under Debate, and there fell out some Accidents which produced great Alterations with reference to the Affairs of that Kingdom: The Earl of *Monmouth*, who was one of the Justices, was lately dead; and it had been very apparent, that whilst he was alive, the Difference between the three Justices, and their different Humours and Affections, had little advanced the settling the Government; so that they who took the most important Survey of all that was done, did conclude that nothing could be so reasonably done towards a Settlement, as the deputed one single Person to exercise that Government: And the Duke of *Ormonde* himself, who had a very considerable Estate in that Kingdom, which made him long for a Settlement, and who had both before the King's Return, and ever since, passionately insisted that the Duke of *Ormonde* should not be employed there; who likewise had as great an Aversion from the Thought of it, I say, the General now built is totally changed his Mind, that he said the King, that there was no Way to expedite the Kingdom out of their Intemperance in which it was involved, but by sending a Lord Lieutenant thither: That he thought it not fit for his Majesty's Service, that himself, who had the Consideration of Lord Lieutenant, should be absent from his Majesty's Person, and therefore that he was very ready and desirous to give up his Commission, and that in his Judgment Nobody would be able to settle and compose the several Factions in that Kingdom but the Duke of *Ormonde*, which he thought would be very grateful to all Sorts of People, and therefore his positive Advice was, that his Majesty would as soon as was possible grant his Commission of Lieutenantcy to him, and send him over into *Ireland*; and both the King and the General had spoken with the Duke of *Ormonde*, and prevailed with him to accept the Charge, but ever I heard of it, all of them believing that the Uncertainty of his being able to go the King Service, is in general a Diffusion and Jealousy of Persons, and Contradiction of Interests, and the great Affection and Friendship I had for the Duke of *Ormonde*, would make me dissuade him from exposing himself to so hazardous an Undertaking; which was very true: But his Majesty believing that it was very necessary for his Service, and the Duke having always resigned himself to his Majesty's Disposal, he cheerfully undertook the Employment; and his Majesty named and appointed Sir *Richard Rainsford*, Sergeant at Law, (since made one of the Justices) as his Majesty's Exchangeer at *Windsor*, Sir *Edward Smith*, one of the Benchers of the *Middle-Temple*, (afterwards made Chief Justice of his Majesty's Court of Common Pleas in *England*) Henry Grey, one of his Majesty's Bed-Chamber, Sir *Walter Churchill*, Colonel *Edward Cadogan*, Sir *Edward Dering*, and Sir *Thomas*, all Persons of very good Parts and very clear Reputations, to be his Commissioners for the Execution of the Bill of Settlement of *Ireland*: And with these, and all other Persons who attended that Interest, the Duke of *Ormonde* entered upon his Journey for that Kingdom about July or August, in the Year One Thousand five hundred fifty-four, full four Years after the King's happy Return into *England*. And when Mr. Grey there shortly preceded his Majesty's Leave to return to his Attendance upon his Person, Sir *Allen Broome* was appointed to serve in his Place as a Commissioner. There was some Alteration before the Governor's coming, after their Arrival in *Ireland*, could settle these Orders and Rules for future Proceedings, which one of the Benchers of the *Middle-Temple*, who was as necessary before they appointed the People to attend, and was as necessary that they should, in the Order of their Proceedings, first proceed upon the *Irish*, both because there should be no Settlement of Soldiers or Adventurers in Possession of any Lands, before the Title of the *Irish* was determined; and because there was a Clause in the last Act of Parliament, that all the *Irish* should put in their Claims by such a Day, and be determined before such a Time; which Time might be prolonged for once by the Lord Lieutenant and Council. So that the Delay for so many Months before the Commissioners first, gave great Argument of Complaint to the *Irish*, that it could not possibly be avoided, in regard that the Commissioners themselves had not been nominated by the King above twenty Days before they began their Journey for *Ireland*; so that they could never so much as reach over the Acts of Parliament together before they came to *Dublin*; and then they found so many difficult Cases in both Acts of Parliament, and so contrary to each other, that it was no easy Matter to determine how to govern themselves in Point of Right, and to reduce themselves to any Method in their Proceedings: But after they had adjusted all things as well as they could, they published their Orders in what Method they meant to proceed, and appointed the *Irish* to put in their Claims by such a Time, and to attend the Prosecution of them

them accordingly. And they had no sooner entered upon their Work, but the *English* thought they had begun it soon enough; for they found every Day many of the *Irish*, who had been known to be the most forward in the first Beginning of the Rebellion, and the most malicious in carrying it on, declared innocents; and Deeds of Settlement and Entails, which had been never heard of before, and which would have been produced (as they reasonably believed) before the former Commissioners, if they had had them to produce, now declared good and valid; by which the *Irish* were immediately put into Possession of a very great Quantity of Land taken from the *English*. So that in a short Time the Commissioners had rendered themselves generally odious as the *Irish*, and were looked upon as Persons corrupted for that Intercourse, which had every Day Success almost in whatever they presented, and their Determinations happened to have the more of Prejudice upon them, because the Commissioners were always divided in their Judgments; and it is no Wonder that they who formed most to adhere to the *English* Interest were most censured by them. The Parliament in *Ireland* was then sitting, and the House of Commons (consisting of very many Members who were either Soldiers or Adventurers, or had the like Interests) was very much offended at the Proceedings of the Commissioners, made many Votes against them, and threatened with them their Authority and Jurisdiction; but the Commissioners, who then knew their own Power, and that there was no Appeal against their Judgments, proceeded still in their own Method, and continued to recover the Claims of the *Irish* beyond the Time that the Act of Parliament or the Act of Settlement limited to them, as was generally understood; and during their last eight or ten Days Sittings upon those Claims, they passed more Judgments and Determinations than in near a Year before, indeed with wonderful Expedition; when the *English*, who were dissatisfied by those Judgments, had not their Witnesses ready, presuming that in Point of Time their Cause could not have been heard. By their Sentences and Decrees, many hundred thousand of Acres were assigned to the *Irish*, which had been looked upon as unquestionably forfeited. This raised the great a Claimant, that the *English* refused to yield Possession upon the Decrees of the Commissioners; who, by an Omission in the Act of Parliament, were not qualified with Power enough to provide for the Execution of their own Sentences: The Court of Law established in that Kingdom would not, nor indeed could, give any Assistance to the Commissioners; and the Lord Lieutenant and Council, who had, in the Beginning, by their Authority, put many of their into Possession of those Lands which the Commissioners had decreed to them, were now more and more referred to the Malcontents of Decrees which had lately passed: so that the *Irish* were using their utmost Endeavours by Force to recover the Possession of those Lands which the Commissioners had decreed to them, whilst the *English* were likewise resolved by Force to defend what they had been so long possessed of, notwithstanding the Commissioners Determination; and the Commissioners themselves were so far troubled and dissatisfied with these Proceedings, and with some intestine Clashes in the Act of Parliament concerning the future Possession of that Affairs, that though they had not yet made any Entrance upon the Decision of the Claims of the *English*, or of the *Irish* Plaintiffs, they declared that they would proceed no further upon the Execution of their Commission, until they could receive his Majesty's Pleasure; and for the better doing thereof, they desired his Majesty's Leave that they might attend his Royal Person; and there being at the same Time several Complaints made against them to his Majesty, and Appeals made to him from their Decrees, his Majesty gave the Commissioners Leave to return; and at the same Time all the other Interests sent their Deputies to solicit their Right: In the Prosecution whereof, after much Time spent, the King likewise thought fit to receive the Advice and Assistance of his Lieutenant; and to the Duke of Ormonde likewise attended his Majesty, and the Settlement of *Ireland* was the third Time brought before his Majesty and his Council; there being then likewise transacted a third Bill, an additional and supplemental in the other two, and to rectify many of the Decrees made by the Commissioners, they bearing the Reprehension of all that had been done, or had succeeded in, and of all Persons who were grieved by any Kind sever.

The King was very tender of the Reputation of his Commissioners, who had been always esteemed Men of great Probity, and unquestionable Reputation; and though he could not refuse to receive Complaints, yet he gave those who complained no farther Countenance, than to give the others Opportunity to vindicate themselves; nor did there appear the least Evidence to question the Sincerity of their Proceedings, or to make them liable to any reasonable Suspicion of Corruption; and the Complaints were still prosecuted by those who had taken from them what they desired to have kept for themselves. The Truth is, there is Reason enough to believe, that upon the first Arrival of the Commissioners in *Ireland*, and some Conversation they had, and the Observation they made of the great Bitterness and Animosity from the *English*, both Soldiers and Adventurers, towards the whole *Irish* Nation, of what Kind soever; the scandalous Proceeding of the late Commissioners upon the first Act, where they had not been guided by any Rules of Justice, but rejecting all Evidence which might operate to the taking any thing from them which they refused to keep, the Judges themselves being both Parnes and Witnesses in all the Causes brought before them; together with the very ill Reputation very many of the Soldiers and Adventurers had, for extraordinary Malignity in the Crown, and to the Royal Family; and the notable Barbarity they had exercised towards the *Irish*, who, without Doubt, for many Years had undergone the most cruel Oppressions of all Kinds that can be imagined, many thousands of them having been forced, without being covered under any House, to perish in the open Fields for Hunger; the infamous Purchases which had been made by many Persons, who had compelled the *Irish* to sell their Remains and lawful Pretences, for very inconsiderable Sums of Money; I say, these, and many other Particulars of this Kind, together with some Attempts that had been made upon their first Arrival, to corrupt them, against all Pretences which should be made by the *Irish*, might probably dispose the

Commissioners themselves to such a Prejudice against many of the *English*, and to such a Compassion towards the *Irish*, that they might be too much inclined to favour their Pretences and Claims; and to believe that the Peace of the Kingdom and his Majesty's Government might be better provided for, by their being settled in the Lands of which they had been formerly possessed, than by supporting the ill-gotten Title of those who had manifested all imaginable Infidelity and Malignity against his Majesty, whilst they had any Power to oppose him; and had not shown any Justice to many of their Contentions, or of their Resolution to yield him for the future a perfect and entire Obedience, when they could oppose him no longer; as if they desired only to retain their Lands they had gotten by Rebellion, together with the Principles upon which they had received them, until they should have an Opportunity to justify both by some new Power or Continuance amongst themselves. Whensoever it proceeded, it was plain enough the *Irish* had received more Favour than was expected or imagined; and in the very Entrance into the Work, to avoid the Partiality which was too apparent in the *English* towards each other, and their Animosity against the *Irish* as evidence, very strict Rules had been set down by the Commissioners, what Kind of Evidence they would admit to be good, and receive accordingly; and it was provided, that the Evidence of no Soldier, or Adventurer, should be received in any Case, to which himself was never so much a Stranger, as, if his own Lot had fallen in *Maynoir*, and that he had no Pretence to any thing out of that Province, his Evidence should not be received as to any thing that he had seen done in *Leinster*, or *Connaught*, or *Ulster*, wherein he was not at all concerned; which was thought to be a very unjust Rule, after so many Years expired, and so many Persons dead, who had likewise been present at those Actions: And by this Means many Persons were declared not to have been in Rebellion, when there was full Evidence that they had been present in such and such a Battle, and in such and such a Siege, if the Witnesses might have to be received, who were then present at those Actions, and ready to give Testimony as to it, and of such Circumstances as could not be forged, if their Evidence might have been received. That which raised the greatest Unbalance against the Commissioners was, that a great Number of the most virtuous Persons of the *Irish* Nation, who were looked upon by those of their own Country with the greatest Esteem, as Men who had been the most violent Fomenters and Professors of the Rebellion, and the greatest Opponents of all moderate Councils, and of all Expedients which might have contributed towards a Peace in the late King's Time, whereby the Nation might have been redeemed, and who had not had the Confidence to much as to offer any Advice before the late Commissioners, were now advanced and declared innocents, and to be settled in their Estates; and that many others, who had in Truth never been in Rebellion, but notoriously faced the King against the Rebels, both in *England* and in *Ireland*, and had never been put out of the Possession of their Estates, were now upon some slight Evidence, by the Imposition of Letters, or Confession of Messengers that they had some Correspondence with the Rebels, though it was evident, that even that Correspondence was perfunctory, and only to secure them that they might pursue his Majesty's Service, were condemned, and had their Estates taken away from them. Many who had formerly made their Claims, without infusing upon any Deeds of Settlement, or other Conveyances in Law, now produced former Settlements, in consideration of *Maynoir*, or other like good Considerations in Law, made before the Beginning of the Rebellion; which being now proved by Witnesses enough, Decrees were every Day obtained for the Rehibition of great Quantities of Land upon those Deeds and Conveyances: though the Urgency of those Deeds, and Perjury of the Witnesses, were very notorious, and some Instances were given of the Manifestation and direct Proof made of the Forgery of Deeds, upon which Decrees had been made, to the Satisfaction of the Commissioners themselves, within a very short Time after the promulgating such Decrees, and yet no Reputation was given, but the said Decrees proceeded, and were executed with all Rigour. The Commissioners saw well, that they had made no Decrees but according to their Conscience, and such as they were obliged to make by the Course and Rules of Justice; that they did not doubt, but in truth did believe, that there had been evil Practices used, both in forging of Deeds and corrupting of Witnesses, and that the same was equally practised by the *English* as well as the *Irish*, and therefore that they had been obliged to make that Order which had been so much excepted against, not to admit the Testimony of any *English* Adventurer or Soldier in the Case of another Adventurer or Soldier; for that it was very notorious they looked upon the Whole as one joint Interest, and so justified each other in their Testimony; and of this they gave many bad Instances, by which it was too evident, that the Perjuries were mutual, and too much encouraged by the one and the other Side. That they had used the best Providence and Vigilance they could, by the careful Examination of the Witnesses, which were produced apart, and never in the Presence of each other, and by asking them all such material Questions as occurred to their Understandings, and which they could not expect to be asked, to discover the Truth, and to prevent and manifest all Perjury: That they had likewise used their utmost Diligence and Care to prevent their being imposed upon with false and forged Deeds and Conveyances, by taking a present and first View themselves of all Deeds produced; and interpreted the Writings made all themselves of the Cunning they could, upon the Matter and Consideration upon which such Deeds had been entered into, and upon the Manner and Circumstances in the Execution thereof; which was all the Providence they could use; and tho' they met with many Reasons oftentimes to doubt the Integrity of the Proceedings, and in their own private Consciences to apprehend there might be great Corruption, yet that they were obliged judicially to determine according to the Testimony of those Witnesses, and the Evidence of those Deeds in Law, against which no Proofs were made: That they had constantly heard all that the adverse Party thought fit to object, both against the Credit of any Witnesses, and the Truth of any Conveyances which were produced; upon which they had rejected

rejected many Witnesses, and disallowed some Conveyances: but when the Objections were only founded upon Presumptions and Probabilities, as most usually they were, they could not weigh down the full and categorical Evidence that was given: That if they had yielded to the Importunities of the Persons interested, who oftentimes pressed to have further Time given them to prove such a Perjury, or to disprove such a Conveyance, it must have made their Work endless, and stopped all Manner of Proceedings, for which it appeared that they were brightened too much in Time, and that in truth would have but opened the Doors wider for Perjury and other Corruptions; hence it was very plain to them, that either Side could bring as many Witnesses as they pleased, to prove what they pleased, and that they would bring as many as they believed necessary for the Work on hand: And therefore the Commissioners having before prescribed a Method and Rules to themselves for their Proceedings, and that no Man could have a Cause in which he was concerned brought to hearing without his knowing when it was to be heard, and to it was to be presumed that he was well provided to support his own Title, and therefore that they had thought fit, upon mature Deliberation amongst themselves, to adhere to the Order they had preferred to themselves and others, and to conclude that they could not be able to prove that at another Day, which they were not to prove then: For the Discovery of any Forgery after the Decree had been passed, and after which they had given no Reparation, they confessed some few such Discoveries had been made to them, by which the Forgery appeared very clearly; but as they had not Power by the Act of Parliament to punish either Forgery or Perjury, but must leave the Examination and Punishment thereof to the Law, and to the Judges of that Law; so that they had only Authority to make Decrees upon such Grounds as were raised in their Conferences, but had not any Authority to reverse those Decrees after they were once made and published, upon any Evidence whatsoever. They concluded with their humble Desire to the King, that the strictest Examination might be made of their Corruptions, in which they were sure to be found very innocent, against all the Malice that was discovered against them: That if they had proceeded in all Things according to the Integrity of their own Hears, and the best of their Understandings; and if they had, through the Defect of that, erred in any Part of their Determinations, they hoped their Want of Wisdom should not be imputed to them as a Crime.

Many who had a very good Opinion of the Person and Ability of the Commissioners, were not yet satisfied with their Decrees, nor did they believe that they were to be finally bound to judge upon the Deposition of suspected Witnesses: But that they were therefore troubled with an arbitrary Power, because it was foreseen that Juries would not have been intrusted, so that they were, upon weighing all Circumstances, to declare what in their Conferences they believed to be true and just: That if they had bound themselves up by too strict and unreasonably Rules, that they should rather have in Time reformed those Rules, than thought to support what was done unjustly, by the Observation of what they had preferred to themselves; and it was believed that the entire Exclusion of the English from the proving of what could not be in Nature be otherwise proved, was not just or reasonable: That their Want of Power to reverse or alter their own Decrees, upon any new and better Reasons which could afterwards occur, was a just Ground for their honest Deliberation in and before they passed any such Decrees; and their Excuse for not granting longer Time, when it was pressed for, upon Reasons which were very visible, was not to be justified, it not being possible for any Man to defend himself against the Claims of the Irish, without knowing what Deeds or Witnesses they would produce for making good their Suggestions; and therefore it was as impossible for them to have all their Evidence upon the Place: Besides that, it was very evident, that in their last ten Days of their Sitting (which were likewise thought to be when their Power was to be put to the test), and in which they had made more Decrees than in all the Time before) they had made in many a Day (contrary to their former Rule and Method), that Men were plainly surprised, and could not produce those Proofs which in a very short Time they might have been supplied with; and the refusing to allow them that Time, was upon the Matter to determine their Interest, and take away their Estates, without being once heard, and upon the bare Allegations of their Adversaries; and in those latter Decrees many Injustices were given of that Nature, wherein the Evidence appeared to be very full, if Time had been given to produce it.

There was one very notable Case decreed by the Commissioners extremely complicated of, and tried out upon by all Parties, as well English as Irish; and for which the Commissioners themselves made no other Excuse or Defence but the Receipt of a Letter from the King, which was not thought a good Excuse for sworn Judges, as the Commissioners were: It was the Case of the Marquis of Antrim, which Case having been so much upon the Stage, and so much enlarged upon, to the Repose of the King, and even to the weakening of the Memory of his blessed Father; and some Men, who most continued to what was unwisely done in that Affair, having done all they could to wound my Reputation, and to get it to be believed, that I misled his Majesty, by my Advice, to oblige that Marquis; I think it is Due both to Truth, and to the Honour of both their Majesties, as well as for my own Vindication, to set down a very particular Narration of that whole Affair; by which it will appear how far the King was from so much as wishing that any Thing should be done for the Benefit of the Marquis, which should be contrary to the Rules of Justice. Whilst his Majesty was in foreign Parts, he received frequent Advertisements from England and from Ireland, that the Marquis of Antrim behaved himself very unduly to him; that he had made himself very grateful to the Rebels, by counselling the late King; and that he had given it under his Hand to Ireland, or some other principal Person employed under Cromwell, that his late Majesty had sent him into Ireland to join with the Rebels, and that he was not offended with the Irish for entering into that Rebellion. Which was a Calumny so false and so odious, as reflected so much upon the Honour

of his Majesty, that the King was long resolved, as soon as God should put it into his Power, to cause the strictest Examination to be taken concerning it: The Report having gained much Credit with his Majesty, by the Notice that the Marquis had procured great Recommendations from those who governed in Ireland to those who governed in England; and that upon the Prefumption of that he had come into England, and as far as St. Albans towards London; from whence he was forced suddenly to return into Ireland by the Activity of his many Creditors, who, upon the News of his coming, had provided for his Reception, and would undoubtedly have called him into Prison; and no Recommendation could have inclined those who were in Authority to do any thing extraordinary for the Protection of a Person, who from the Beginning of the Irish Rebellion lay under so ill a Character with them, and had fed ill a Name throughout the Kingdom.

The King had been very few Days in London, after his Arrival from the Parts beyond the Sea, when he was advised that the Marquis of Antrim was upon his Way from Ireland towards the Coast; and the Commissioners from Ireland, who have been mentioned before, were the first (if I remember well) who gave his Majesty that Information; and at the same Time told him all that his Majesty had heard before concerning the Marquis, and of the bold Calumnies with which he had traduced his Royal Father, with many other Particulars; all which they affirmed would be proved by unassailable Evidence, and by Letters and Certificates under his own Hand. Upon this full Information (of the Truth whereof his Majesty entertained no Doubt), as soon as the Marquis came to Town, he was, by his Majesty's special Order, committed to the Tower; not only upon Pretence from his, or baseness of his Person (of which he had some very powerful) prevail with his Majesty to admit him into his Presence; but by the first Opportunity he was sent Prisoner to Dublin, where he was committed to the Castle, his Majesty having given Direction that he should be proceeded against with all strictness according to Law; and to that Purpose the Lords Justices were required to give all Orders and Directions necessary. The Marquis still professed his Innocence, and said all the Means he could so procure that he might be speedily brought to his Trial, which the King likewise expected; but after a Year's Detention in Prison, and nothing brought against him, he was set at Liberty, and had a Pail given him by the Council there to come into England. He then applied himself to his Majesty, demanding nothing of Favour, but expected Justice, and desired that many Years hence, deprived of his Estate, he might at last be restored to it, if nothing could be objected against him wherein he had deserved his Majesty. He was a Gentleman that from his Youth had been bred up in the Court of England; and having married the Dutchess of Berwick, he had been very well received by both their Majesties, and was frequently in their Presence; he had spent a very vast Estate in the Court, without ever having received the least Benefit or Advantage from it; he had retired into Ireland, and lived upon his own Estate in that Country five Years before the Rebellion broke out; in the Beginning whereof he underwent some Sufferings, having had some Correspondence with them, and possibly made some Faults in Undertaking to them; but he went speedily to Dublin, and from thence transported himself to Oxford to his Majesty, to whom he gave for good an Account of all that had passed, that the King had no Doubt of his Affection to his Service, though he had little Confidence in his Judgment and Understanding, which were never very remarkable: Besides that, it was well known that he had a very unreasonable Envy towards the Marquis of Ormonde, and would have felt it believed that his Interest in Ireland was so great, that he could easily reclaim that whole Nation to his Majesty's Obedience; but that Vanity and Presumption never gained the least Credit with his Majesty.

Upon the Complaint sent into England with their Army upon the Obligation of their Covenant, and all his Majesty's Endeavours to prevent it being disappointed, the Marquis of Antrim had proposed to his Majesty to make a Journey privately into Scotland, and to get into the Highlands, where, with his Majesty's Authority, he hoped he should be able to draw together such a Body of Men as might give his Countrymen Cause to call for their own Army out of England to secure themselves; and with this Overture, or upon the Debate thereof, that the Earl of Antrim (for he was then so named) might be likewise sent into Ulster, where his Interest lay, from whence he would be able to transport a Body of Men into the Highlands, where he had likewise the Claim of the Abbot, who acknowledged him to be their Chief, and would be consequently in Undertaking; by which means the Marquis of Antrim would be enabled the more profitably to proceed in his Undertaking. The Earl of Antrim entered upon his Undertaking with great Alacrity, and undertook to the King to perform great Matters in Scotland, to which his own Interest and Ambition enough disposed him, having an old and sharp Controversy and Contention with the Earl of Argyle, who had dispossessed him of a large Territory there. All Things being adjusted for this Undertaking, and his Majesty being well pleased with the Cheerfulness of the Earl's Undertaking, he created him at that Time a Marquis, gave him Letters to the Marquis of Ormonde, his Lieutenant there, as well to satisfy him of the good Opinion he had of the Marquis of Antrim, and of the Truth he had repaid in him, as to wish him to give him all the Assistance he could with Contentment for the carrying on that Expedition for Scotland; and for the better preventing any Intercourse that might fall out by the Rashness and Inadvertence of the Marquis towards the Marquis of Ormonde, his Majesty sent Daniel O'Neil, one of his Bed-chamber, into Ireland with him, who had great Power over him, and very much Credit with the Marquis of Ormonde, and was a Man of that Address and Dexterity, that no Man could so well prevent the Inconveniences and Prejudice which his natural Indifference and Levity might tempt the Marquis to, or more displicate and incline the Lord Lieutenant to take little Notice of those Vanities and Indiscretions; and the King did likewise, having no Desire that the Marquis should lay long in Dublin, and he pressing at his going from Oxford, that he would in Person

go into *Self* with his Forces, give him Leave to hold that Correspondence with the Rebels (who had the Command of the most Northern Parts, and with a whole Cantonment at least he would very hardly be able to make his Levee, and transport his Men) as was a relief to that End: Within the Limits of which it is probable enough that he did not consider himself, and might for many Things which he had not the least Authority to warrant him in.

Upon his coming to *Dublin*, the Lord-Lieutenant gave him all the Consideration he could wish, and assisted him in all the Ways he could to procure his *Deputy*; but the Men were so beset in or near the Rebels Quarters. And it cannot be denied but that the Levee he made, and sent over into *England*, under the Command of *Kilmer*, was the Foundation of all those wonderful Acts which were afterwards performed by the Marquis of *Albany*; in this *Exile* *Hundred* was good *Mrs.* with very good Officers, all in *Kings*, that neither the *ill Fate*, nor the *ill Lucking* in the *Highlands* gave them any Discontentment, and gave the full Reputation to the Marquis of *Albany* of being at the Head of an Army, under which he drew together such of the *Highlanders*, and others of his *troops* who were willing to regard him; but upon any Military Action and *Disaster* given by them to the *Army*, which happened as often as they encountered the *Army*, they went always home with their Booby to their *Heads*, and the *Army* only stood together with their *Generals*. And from this it grew the Marquis of *Albany* grew to that Power, that after many Battles won by him with notable Slaughters of the *Enemy*, in one of which he defeated the Marquis of *Argyll*, with his Army of above twelve thousand of men, *Albany* had, and in which the Marquis of *Argyll* was forced to make his *Escape*, by putting himself almost single into a Boat, and to putting himself off into the Sea, having left, besides others, many of his own Name and Family dead upon the Ground; after which the Marquis of *Albany* marched victoriously with his Army, till he made himself Master of *Edinburgh*, and redeemed out of the Prison there the Earl of *Crawford*, Lord *Ogby*, and many others of his Friends, who had been taken and fast there, with the Rebellion that they should all leave their Heads; and the Marquis of *Albany* himself did always acknowledge, that the Rise of his good Success was due to and to be imputed to that Body of *Men*, which in the beginning bore him over by the Marquis of *Argyll*, to whom the King had acknowledged the Service by several Letters all in his own Hand, in which were very gracious Expressions of the Grace his Majesty had of his great Services, and his Reliance on to reward him. It is true, the Marquis of *Argyll* himself had not gone over with his Men, as he promised to do, but stayed behind in *England*, under Pretence of raising a greater Body of Men, with which he would venture his own Person; but either out of Jealousy or Displeasure against the Marquis of *Albany*, or having, in truth, no Mind to that Service, he never pursued the one nor the other, but remained not only in the *English* Quarters, but in their Councils, taking all Occasions to enquire whatsoever the Lord-Lieutenant might do, by which he gave great Advantages against himself and might, in the Queen's *Letter*, have been as severely punished by the King as the worst of the Rebels. At last, after he had been taken Prisoner by the *English* at *Scotch*, and made his *Escape* out of their Hands, he transported himself into *France*, and from thence came into the *West* into the Harbour of *Falmouth*, when the Prince (his Majesty that now is) was in *Germany*; to whom he immediately made Tender of his Service with two good Frigates which he had, and in which were likewise a Quantity of Arms, and some Ammunition, which he had procured in *France*, for the Supply of *Ireland*. Most of the Arms and Ammunition were employed, with his Consent, for supplying of the Troops and Garrison in *Germany*; and his Majesty made use of one of the Frigates to transport his *Protein* to *Scotch*, and from thence to *Jejy*, without which Convenience, the Prince had been exposed to very great Difficulties. And after all which, *Dublin* being given up to the Parliament, as the King's Authority withdrawn from that Kingdom, he again transported himself into *England*, and joined with the *Army*, and was by them sent into *France*, to deliver the Queen-Mother and the Prince to find the Marquis of *Ormond* to exercise his Majesty's Government in that Kingdom; which was done accordingly, in the Manner as is mentioned before.

The Marquis of *Argyll* alleged all these Particulars, and produced many original Letters from the late King, the Queen-Mother and the Prince, in all which his Services had been acknowledged, and many Promises made to him; and concluding with a full Protestation, that he desired no Pardon for any Thing he had ever done against the King; but if that were the least Proof that he had tried in his Fidelity to him, or had not, according to the best of his Understanding, advanced his Service, he looked for no Pardon. But if his being in the *English* Quarters, and consulting with them, without which he could not have made his Levee for *Scotland*, and his joining with them afterwards, when his Majesty's Authority was withdrawn from thence, do, by the strict Letter of the Law, expose him to Ruin without his Majesty's Grace and Favour, he did hope his Majesty would relieve him from that Malignity, and that the Forfeiture of his Estate should not be taken, as if he were a Traitor; and that he should be treated as he was entitled to by his Country, as he could pretend, his Debts were so great, and his Conditions, at best, would not be liable to much Ease. Though the King had never been taken Notice of to have any great Inclination to the Marquis, who was very little known to him; yet this Representation, and clear View of what he had done, and what he had suffered, raised great Compassion towards him in his Majesty's Royal Breast; and he thought it would, in some Degree, reflect upon his own Honour and Justice, and upon the Memory of his blessed Father, if, in a Time when he passed by so many honest Transgressions, he should leave the Marquis to the Fury of his Enemies, for no other Crime upon the Matter, than for not having that Prudence and Justice in his Endeavours to serve the King, as he ought to have had, and the Recour he had exercised towards him upon his first Arrival, at *Vol. VIII.*

finding him so to be tried in *England* by those who enough valued his Disaffection, and that they had not been able to make the least Proof of his Innocence, and that his Majesty's good Disposition towards him, by the satisfied and only with a Letter to the Commissioners on his behalf, which the Marquis could not importunately defend, as the only Thing that could do him good, but his Majesty desired a Letter to be prepared in the Lord-Lieutenant, in which all his Allegations and Suppositions should be set down, and the Truth thereof examined by the Lord-Lieutenant; and that if he should be found to have committed no greater Fault against his Majesty than that which he confessed, that then the Letter should be sent to the Commissioners, that they might for both their Masters Testimonies on such Particulars as were known to themselves. And this Letter was very warmly drawn, and being approved by his Majesty, was sent accordingly to the Lord-Lieutenant; and shortly after was, contrary to his Majesty's Resolution, and contrary to my Advice, and without my Knowledge and Power, likewise sent to the Commissioners; who had themselves made such a Decree as is before mentioned, and declared that they had made it only upon that Ground: Which gave his Majesty some Trouble, and obliged him to send a Clause in the next Bill concerning that Affair. And this was the whole Proceeding that related to the Mirrors of *Argyll*, in which I had so Temptation of any Kind to be in love me; and I do not yet Understanding to comprehend how there was more Favour shewed towards him by his Majesty, than he might as *Justice* reasonably pretend to; what Note never hath been raised, and what *Clubs* for ever have been made upon that whole Transgression.

When his Majesty entered upon the Debate of this Third Bill, it was transmitted to him for a Supplement and Addition to the former Two; he quickly passed the Settlement proposed, and which was the last of the Three Bills, was now grown more difficult than ever; All his Measures which had formerly been taken, from the great Proportion of Land which would remain to be disposed of, were so much to be relied upon, his appeared to have been a strong Foundation from the Beginning, which was now made more desperate, by the vast Proportions which had been assigned to the *Army* by the Commissioners Decree; and somewhat had intervened by some Acts of Bounty from his Majesty, which had not been carefully enough watched and represented to him. The King had, upon passing the former Bills, and upon discussing how much the *Army* were like to forfeit, resolved to mean all that should by Possibility, or otherwise, come to his Majesty, in his own Power, to the End, that when the Settlement should be made, he might be able to gratify those of the *High Nobles*, who had had any thing of *Ment* towards him, or been least faulty, but he had unawares severed from that Rule, and had made several Grants, out of his Royal Bounty, to many of his Servants, who had been encouraged by those Friends in *England* to make their Suits, and had procured Certificates from thence; which being produced to his Majesty, had disquieted him to those Considerations, which otherwise he would not so easily have passed. There was besides, in all such Grants, a new Clause introduced, of a very new Nature, for they had granted always upon Letters out of *England*, and passed under the Great Seal of *Ireland*, the Letters were formed there, and transmitted hither only for his Majesty's Sign Manual; it is neither his Majesty's learned Council as Law, nor any other his Ministers (the Secretaries only excepted) had any Notice of such Grants. The Clause was, That if any of those Lands be granted by his Majesty should be otherwise decreed, his Majesty's Grant should be required with other Lands, so that in many Cases the present Indebtedness to his Majesty's Bounty being the Uncertainty of his own Right, which the Person to whom it was granted was obliged to vindicate at his own Charge, his Majesty was now bound to make it good if his Grant was not a *Gift*; and that if any of those Grants were granted by his Majesty, was inserted into a real and substantial Burden, as a Debt from his Majesty; which caused another Difficulty in the Settlement, which was yet the more hard, because there were many Claims of the *High Nobles* not yet raised, all the late Advertisements to be examined, and many other Uncertainties to be determined by the Commissioners, which left those who were in Possession, as well as those who were not, in the highest Insecurity and Apprehension.

This Insecurity, and even *Doubt*, which possessed all Kind of People, of any Settlement, made all of them willing to contribute to that which could be proposed. They found his Majesty very unwilling to consent to the repeal of the Decrees made by the Commissioners; which must have taken away the Confidence and Assurance of whatsoever should be done hereafter, by making Men see, that what was *Acted* by the Act of Parliament might be subjected by another; so that there was no Hope by such an Expedient to increase the Number of Acres, which being left might in any Degree comply with the several Pretences. The *High Nobles* found that they might be only able to shew any Settlement, but should never be able to get such a one as would turn to their own Satisfaction. The Soldiers and Adventurers agreed less upon themselves; and the *Clergy* was as great against them, who by the late Advertisements had got more than they should have, as from those, who had received less than their Due; and they who had feared any new Examination could not yet have any other Title, before all the bill were settled. In a Word, all Men found that any Settlement would be better than none, and that more Profit would arise from a smaller Proportion of Land, quietly possessed, and husbanded accordingly, than of a much greater Quantity, but a doubtful Title, and an Uncertainty which must distract any Industry and Improvement. Upon these Considerations and Motives they met amongst themselves, and debated together by what Expedient they might draw Light out of this Darkness: There appeared only one Way which admitted any reasonable Hope, which was, by increasing the Stock for Rewards to raise a Degree, that all Men's Prizes as might, in some Measure, be provided for; and there was no other Way to arrive to this, but by every Man's parting with somewhat which he thought his own: And as this they had seen Inconvenient, which was of the highest Importance to them, which was, that this Way so bad would be put to the unlimited Jurisdiction of the Commissioners, which was

very terrible to them) who from henceforth would have little other Power than to execute what should be here agreed upon. In Conclusion, they brought a Proposition to the King, raised and digested between themselves, that all Persons, who were to receive any Benefit by this Act, should share and give a fourth Part of what he had towards the Stock for Repayment, all which the Commissioners should distribute amongst those who should appear most fit for his Majesty's Bounty; and this Agreement was so unanimous, that though it met with some obstinate Opposition after it was brought before his Majesty, yet the Number of his Opposers was so small in respect of the others who agreed to it, that they grew weary and ashamed of further Contention; and thereupon this Third Act of Settlement, as I say, to the other Two, was confirmed by the King, who, to publish to the World that nothing stuck with him which seemed to reflect upon his Commissioners in their Proceedings, resolved to make his Majesty and I, though Mr. Baron Rainsford, and Sir Thomas Boreham, made their humble Suit to his Majesty, that they might not return again into Ireland, his Majesty did not grant their Request, and continued Sir Edward South, who was now Chief Justice of the Common-Pleas in that Kingdom, Sir Edward Durning, Sir John Bradstreet, (who had succeeded Mr. Conway in that Office, when he returned to Court) Sir Thomas Charnell, and Colonel Cade, his Commissioners, to execute what was done by this new Act, and to perfect the Settlement. There were all the Translations with reference to Ireland, which I was busy to, and in which I assisted, as all the rest of my Lords of the Council who were present did, and did very little more in this any of the rest did, except when any Difficulties occurred in their private Meetings and Debates, they sometimes related to me for Advice, which I was very ready to give them to the best of my Understanding, being very ready and willing to take any Pains which might make that very difficult Work more easy to be completed; but as I never desired any Reward for so doing, so I never received the Benefit of one Shilling in Money, or Money-worth, for any thing that was done in that Affair; and was so far from entreating any Oblivion made to that Purpose, that it is notoriously known to some Persons of Honour, who I presume, will be ready to testify the same, that when, upon his Majesty's last Return into England, these Propositions were made to me, of recovering the Grant of some forfeited Lands, and for the buying of other Lands there, upon the Defeat of the Owners thereof, and at so low a Price, that the very Profit of the Land would in a short Time have paid for the Purchase; and other Overtures of immediate Benefit in Money, which others did, and lawfully might accept; I rejected all Propositions of that kind, or relating to it, and declared publicly and privately, that I would neither have Lands in Ireland, or the least Benefit from thence, till all Differences and Prejudices there were fully agreed and settled, that there could be no more Appeal to the King, or relying on his Majesty and Council for Justice, in which I told them, I should never be thought so competent an Adviser, after I had any Life of my own in that Kingdom, to bias my Inclinations, and I never took a former Resolution in any Particular in my Life, that to adhere to that Conclusion: Yet, because it is notorious enough, that I did receive afterwards some Money out of Ireland, and have a very lawful Title to receive more, it is necessary, for my own entire Vindication, to set down particularly how that came to pass, and to mention all the Circumstances which preceded, accompanied, or attended that Affair.

Amongst the Bills which were sent transmitted from Ireland after his Majesty's happy Return, there was an Imposition of a certain Sum of Money upon some fenced Lands, as in the several Provinces, (the Nature whereof I cannot change my Memory with) which were to be paid to his Majesty within a limited Time, and to be disposed of by his Majesty to such Persons who had served him faithfully, and suffered in his doing, or such Persons who for I may say with a very good Confidence say, that I never to this Minute read the Act of Parliament, and am almost confident that I never heard of it at the Time when it passed, being often absent from the Council, by reason of the Court, or other Accidents, when such Matters were transacted. But very near two Years after his Majesty's Return, I received a Letter from the Earl of Orrey, that there would be in his Hands, and the Earl of Argyll's and Lord Menzies's, (who it seems were appointed Treasurers to receive the Money raised by that Act of Parliament) a great Sum of Money for me; which he gave me Notice of, to the End that I might give Direction for the Disposal thereof, whether I would have it returned into England to me in Money, or laid out in Land in Ireland, and he desired that I would speedily give my Direction, because he was confident that the Money would be paid in, less by the Time that my Letter could arrive there. No Man can be more surprised with any thing, than I was at the Receipt of this Letter, believing that there was some Mistake in it, and that my Name might have been used in Trust by somebody who had given no Notice of it; and without returning any Answer to the Earl of Orrey, I went by that Post to the Lord-Lieutenant, (for it was after his first going into Ireland) to inform him what my Lord of Orrey had writ to me, and to desire him to inform me, by his own Inquiry, what the Meeting of it might be. Before I had an Answer from the Lord-Lieutenant, or indeed before my Letter could come to his Hands, I received a second Letter from the Earl of Orrey, in which he informed me, that there was now paid in, to my Use, the Sum of Twelve Thousand six Hundred Pounds, or thereabouts, and that there would be the like Sum again received at the End of Six Months; sending me likewise a particular Direction to what Person, and in what Form, I was to find my Order for the Payment of the Money. I forbore likewise to answer this Letter, till I had received an Answer from the Lord-Lieutenant; who then informed me at large, what Title I had to this Money, and how I came to have it: That shortly after the passing of that Act of Parliament, which had given his Majesty the Disposal of the Money before-mentioned, the Earl of Orrey had come to him, and putting him in mind how the Chancellor had made all Overtures which had been made to him of Benefit out of that Kingdom,

(which Refusal, and many others, which show how much I have always been in the Way of getting, is not there known to me) in being thus to the Lord-Lieutenant, wished that he would go to his Majesty to confess some Part of that Money upon him; which the Lord-Lieutenant very willingly did, and his Majesty is cheerfully granted: That a Letter was accordingly prepared, and his Majesty's Royal Signature procured by Mr. Secretary Nicholas, who was at the same Time commanded by the King not to let me know of it; and to which Purpose there was likewise a Clause in the Letter, whereby it was provided that I should have no Notice of it, which the Lord-Lieutenant said was by his Majesty's Direction, or with his Approbation; because it was said, that if I had Notice of it, I would be so foolish as to obstruct it myself: And that there was a Clause likewise in the said Letter, which directed the Payment of the said Money to my Heirs, Executors, or Assigns, if I should die before the Receipt thereof. Of all which things I was afterwards advised by the Lord-Lieutenant, and of which, all that Time I had not the least Notice or Intimation. I desired Mr. Secretary Nicholas to give me a Copy of that Letter, (which had been first passed as a Grant into me under the Great Seal of Ireland, according to the Form of that Kingdom) which he gave me, with a large Account of many gracious Circumstances in the King's granting it, and the Obligation laid upon him of Secrecy, and the great Caution that was used that I might have no Notice of it. After I was informed of all this, I did not think there was any thing left for me to do, but to make my humble Acknowledgement to his Majesty for his Royal Bounty, and to take care for the receiving and transmitting the Money to me, and that I might receive the same very honestly: I did thereupon wait upon his Majesty with that Duty which became me, and his Majesty was graciously pleased to enlarge his Bounty with thank Expressions of Favour, and the Satisfaction he had vouchsafed to take himself in the conferring his Donative, that my Joy was much greater from that Grace, than in the Graciousness of the Gift.

At the very same Time, and the very Day that I received the Letter from the Lord-Lieutenant, the late Earl of Portland came to me, and informed me of a Difference that was fallen out between the Lord-Lieutenant, and Sir Baylyde Whithelm, upon a Debt in the Title to certain Lands purchased heretofore by the said Sir Baylyde Whithelm from the Lord-Lieutenant, and possessed by the latter for many Years; that the Lord-Lieutenant had been compelled, in the late old Times, for the raising of Money to pay his Commissions, and other necessary Uses, to make Sale of his Manor of Biddulph in the County of Wilt, and that Sir Baylyde Whithelm had purchased the same from him at a less Price than in truth it was worth: That though the Commissions had been made and executed with all the Formality the Doctrine of that Time required; and that the Lord-Lieutenant had consented, that his Son, who was then under Age, should pass in the same Assurance when he should accomplish the Age of One-and-Twenty, which he had now newly done about the Time we are now mentioning; and that the Lord-Lieutenant was resolved, though he was in his Person liable to the Covenant, to take Advantage of the Alteration of the Times, and to compel Sir Baylyde Whithelm to pay him more Money, or that his Son, who was Tenant in Remainder, should enter upon the Land. The Earl said, that he desired to make an End between them, and that the Lord-Lieutenant (whose great Friend he was) should receive some more Money, which his Condition required, without do him any Damage to Sir Baylyde Whithelm, as by the Law he would be liable to, between the other might suffer in his Person; that upon Conference between them, he found that the Manor of Biddulph was joined to some Land I had in Wiltshire, and would be very convenient to me, and therefore wished that I would purchase it at a just Value, which would produce a Satisfaction to both the other. This Proposition being made upon the said Day, I said before, that I received the Letter from the Lord-Lieutenant of Ireland, by which it appeared that there was now as much as Money already received for me as would pay for that Purchase, besides what would be more received within Six Months after, I wished the Earl of Portland to bring both the Parties concerned to me within Two Days, in which Time I would resolve what to do; nor did I need much Time to consider of it, the Person who then rented the Whole, and the Lord itself, being very well known to me: So that when they all came to me at the Time appointed, after a very short Conference together, we agreed upon the Purchase, and appointed the Writings to be prepared and executed as soon as might be; when I promised to pay some Money together than is usual in such Purchases, promising I could not at all be disappointed in the Return of the Sum of Money from Ireland, which was the sole Ground and Encouragement I had to undertake that Bargain: But the very next Letter I received from thence informed me, that the Negotiations of that Kingdom had been such, that they could only receive me six Thousand Pounds, and that they had been forced to make use of the rest for the Publick, which would without doubt take care to repay me again within a few Months; and so I found my self engaged in a Purchase which I could not retract, upon a Permisson of Money which in that manner I was disappointed of. And I have not only never since received a Penny of what was due upon the Second Payment, (and which I presumed would have been to me, as certain, that I signed it upon the Marriage of my Second Son to him, as Part of his Portion), but the Return of the first Sum was so increased or taken from me, that no Part of it hath been paid to me, or to my Use: By which, and the Inconveniences and Damage which hath since ensued to me from thence, I may reasonably say, that I am yet a Loser, and involved in a great Debt by that equal Bounty of his Majesty, which I hope will, in due Time, be made good to me under so good a Security as an Act of Parliament; and I have great Reason to complain of those my very good Friends who have disposed his Majesty to that Act of Grace, and were not afterwards cautious enough in their several Offices to make it effectual to me. And this is a very true Account of all that Business, and of all the Money which I ever received from Ireland, with all the Circumstances thereof, which, I hope, in the

Justi-

Judgment of all impartial Men, will not reflect to the Prejudice of my
loyalty and Honour.

The Sixteenth Article in, *That I have debated and betrayed his Majesty
and the Nation, in all Foreign Treaties and Negotiations relating to the late
War.*

I do heartily wish that those particular Treaties, and the Particulars in
those Treaties, had been mentioned, wherein it was conceived that I had
debated and betrayed his Majesty, that I might have at large set down
whatsoever I have known and done in these Treaties, and then it would
easily have been made appear how I have been from betraying and de-
ceiving him. It was never any Ambition of my own that I sought me to
have a Part in any Treaty; God knows, I heartily wished to have med-
dled in nothing but the Administration of that great Office the King
thought fit to entrust me with; but his Majesty had so good an Opinion
of me, that, that he required and commanded my Service in many
of these Treaties, and therefore it will be necessary for me, according to
the Method I have hitherto used, to mention every particular Treaty that
has been entered into, since the Time of his Majesty's Return into Eng-
land, and the Part that I have had in it: Being as willing to be called to
the strict Account for any other Treaty he had made when he was
Abroad, or for any other Council I have ever given in my Life, publick
or private; whereas, I doubt not, I shall be found to have behaved my-
self (according to the weak Abilities God Almighty hath given me) with
Fidelity to my Master, and with all imaginable Affection to my Country,
how unhappily former I am repented.

The first Treaty was with the Crown of *Denmark*, in which I was one
of the Commissioners who treated, and was only present when any Report
was made by the Commissioners to the Council-board, when all the Ar-
ticles were debated, and I do not remember that there was any Difference
of Opinion upon any of them; and that Treaty hath been generally held
the best that hath been made with any Crown, the Merchants having
thence greater Advantages in Trade than they have in any other Place,
besides many other great Benefits, with a great Enlargement of his Ma-
jesty's Empire.

The second Treaty was with the *State of the United Provinces*, in
which likewise I was one of the Commissioners who treated; but all that
was by them transacted was full brought to the Council-board, and de-
bated there in his Majesty's Presence, in which the Rule by which his
Majesty guided himself was, as I remember, that he would not consent
to any of those Concessions which had been formerly made by them in their
Treaty with *Granada*; and their Unwillingness to consent to that was the
Reason that their Ambassadors proceeded so slowly: And his Majesty had
the less Reason to be impatient for Expedition, because the King of *France*
had given him his Royal Word, and proposed it himself, that the two
Crowns might proceed in their several Treaties with the *Dutch* together,
that so they might be brought to such good Conditions, that they might
have like good Neighbours with both the Crowns, which, as offered,
they were not naturally inclined to do; and promised positively, that, for
his Part, he would not conclude any Thing with the *Dutch*, before he
had actually communicated the same to his Majesty. Notwithstanding
which Engagement, *France* entered into and finished their Treaty, and in
it made that secret Article, which they declared afterwards to be the
Ground and their Obligations to assist the *Dutch* in the ensuing War.
However, his Majesty proceeded not, till the *Holland* Ambassadors con-
fessed to all which had been granted before to *Granada*; which being
done, the Peace was made and ratified on both Sides, and, without Doubt,
with more Advantage and Honour to the English, than ever had been pro-
vided by any former Treaty between the Crown of England and those
States.

From the two Crowns of *Sweden* and *Denmark*, Ambassadors Extraor-
dinary arrived here shortly after his Majesty's Return; and the several
Treaties were made with both those Crowns before the Departure of the
Ambassadors; in neither of which Treaties I was a Commissioner, nor
knew any Thing that passed in either, but so it was registered at the
Council-board, and debated in his Majesty's Presence; nor did I ever
hear that either of them was reckoned a disadvantageous Treaty, both of
them containing much Benefit to the English as any Treaties which had
been made before with those Crowns. It is very true, there were some
unusual Expressions of Kindness and Friendship in the Treaty with *Den-
mark*; which in respect of that King's being at that Time in a very low
Condition, under the disadvantageous Conditions of the Treaty of *Copen-
hagen* newly submitted to, and under almost all a Treaty extorted
from him by the *Dutch*, and yet being in terrible Apprehension of some new
Oppression from the one and from the other, the Ambassadors did very car-
efully infer, and were, upon great Deliberation, allowed
and intreated by his Majesty's own particular Direction. In consid-
eration of the new Alliance in Blood between his Majesty and that King;
and the Civilities and Obligations his Majesty had received from *Denmark*,
during his Majesty's being in *Holland*, after the Murder of his Father, and
during his being in *Sweden*, when the King of *Denmark* sent him *Holm*,
Arnis and *Arranion*; of which his Majesty had so great a Sense, that he
was often heard to say, That if it had pleased God to have brought him
Home before that disadvantageous Peace at *Copenhagen* had been made,
which was done by the Consequence of the English Ships, and the Ar-
rest of trade who went. Then Ambassadors of the English Ships, and the Ar-
rest of trade, that he would have done the best he could to have defended and pro-
tected him, and therefore he did very readily yield to that Article drawn
by the Ambassadors; his Majesty declaring at the same Time, that he was
very willing that their Princes who were Neighbours to *Denmark*, and
from whom that Kingdom apprehended new Oppressions, should know his
Majesty's Readiness to support that King, and defend him from new In-
juries, to which the Policy of his Government, as well as his Inclination,
urged and obliged him; though it is very true, the King of *Denmark* did
shortly after make very ill Returns to his Majesty for that his signal
Affection.

There were all the Treaties made by the King before the War with the

Dutch, for there was very little Progress made either with *Sweden* or *Spain*
for the Reasons mentioned before, except only a short Treaty with the
Electress of *Brandenburg* which Treaty, for the most Part, was put to-
gether with reference only to the Prince of *Orange*, his Majesty's Nephew, and
for the better ordering of his Affairs, in which Treaty his Majesty him-
self employed few or six of his Privy-Councillors; and all the Affairs
between his Majesty and that Electress in Point of Trade, were then
transacted by them, and debated and considered at the Council-board;
and so which all Things were referred for his Majesty's Return and con-
sideration; and if they had not been afterwards voided by the Electress, his Majesty
had respected much Fruit and Advantage even by that Treaty.

After the War was entered into with *Holland*, his Majesty sent Mr.
Grosvont to *Sweden*, and Sir *Robert Talbot* to *Denmark*, to dispute those
two Crowns to a Conference, each other, and then to dispute them both
to adhere to his Majesty, or at least not to favour or assist the *Dutch*. The
Treaty with *Sweden* succeeded to his Majesty's Will, and was concluded
in a League Defensive, very much to the King's Satisfaction, and with
the full Approbation of the whole Board; that Crown having manifested
so much Affection to his Majesty, and such an Inclination to an entire
Conjunction with him, that upon a very reasonable Condition they would
have been inclined to have entered into a League Offensive, and even in
the present War against the *Dutch*. In order to which, they lost their Ar-
maments, and at the same Time when Mr. *Grosvont* returned, and they
became the Mediators for the Peace, having first declared to his Majesty,
that if the Treaty should prove successful, the Crown of *Sweden* would
immediately join with his Majesty in the War against the *Dutch*. What
became of the other Treaty with *Denmark* is publickly known, his
Majesty having declared to all the World how particularly he was
touched by the *Dutch*.

There remains only One other Treaty to be mentioned, which is the
last with the *Dutch*, upon which the Peace was made, and therefore it
will be necessary to set down the Issues many to that Treaty, the able
Progress and Conclusion of it: By all which it will easily appear that his
Majesty was neither betrayed or deceived in it, or if he were, that it was
not done by me. After so many Encounters and various Successes in the
War, which had been carried on with a much greater Expense than his
Majesty, at his first Entrance into it, was persuaded it would cost him,
when he saw the Strength and Power of the *Dutch* so much increased by
the Conjunction of *France* and *Denmark*, which supplied them with Ma-
ny, Ships, and (what they had more wanted) with Men as fast as they
desired; and that all the Propositions he could make to Spain could not in-
duce them to enter into such an Alliance with him as might enable them
to resist *France*, notwithstanding it was evident to all but themselves, that
the *French* refused to break the Peace with them, having at that Time
published those Declarations, which they afterwards made the Ground of
the War: His Majesty clearly discerned, that the *Dutch* grew less weary
of the War than they had before seemed to be; and that they would
be able, with that Assistance and Conjunction, to continue the War with
less Inconvenience than his Majesty was like to do. He had found it ne-
cessary for the lengthening the Trade of the Enemy (the depriving them
of which could only induce the *Dutch* to desire the Peace, and which he
could not do by the Strength of his own Ships, which he still kept to-
gether to encounter their Fleet) to grant as many Commissions upon Letters
of Mart to private Men of War as desired the same, and with such strict
Orders and Limitations as are necessary in such Cases; and he found in-
deed the Advantage very great, in the Damage those Men of War did to
the Enemy, which was considerable, and gave them great Trouble: On
the other Side, the common Sense chose much rather to go on board
those Men of War, where their Profit out of their Shares of the Booty
was greater, and their Hazard much less than in the King's Ships, where
they got no Share without Booty, and were not any way or Provisions
were much greater than they had been in a former Time; for when
the Royal Fleet was to be sent out, there was greater Difficulty in
procuring Seamen and Mariners to man it. And then, whereas the Ad-
vancement of Trade was made the great End of the War, it was now
found necessary to suppress all Trade, that there might be Manner
enough to furnish the Ships for the carrying on the War; and this In-
convenience produced another Mischief, for, by the great Diminution and
even Suppression of Trade, there was likewise so great a Fall in the
Customs, Excise, and all other Branches of the King's Revenue, that it
was evident enough, that his Majesty would have very little to carry on
the War, who would have been by Impulsion in Parliament upon the
People, who already complained loudly at the Decay of their Rents, of
the small and low Price which their Commodities yielded by the Cellation
of Trade, and especially by the carrying out of all the Money in Specie
from the several Counties, to *London*, for the carrying on the War;
and the Parliament itself appeared to be so weary of it, that instead
of granting a new Supply, proportionable to the Charge, they fell upon Ex-
pedients to raise Money by Sale of Part of the King's Revenue, which
was already too small to support the ordinary and necessary Expense of the
Crown. But above all, his Majesty was most discouraged by the extreme
Licence of the Seamen in general; but especially of those who were
called *Privateers*, for out in the particular Ships of War upon Adventure,
who made no Distinction between Friends and Foes; but, as if the Sea
had been their own Quarters, they seized upon all Ships which came
within their View, and either pillaged them entirely, and so disarmed
them, (which they usually did to those which they thought would be de-
livered by the Court of Justice) or else brought them into the Harbours
after they had taken from them what they left aboard. And then the
formal Proceedings in the Court of Admiralty, were so dilatory and in-
volved in so many Appeals, that the Prosecution of Justice for Injuries
received grew as grievous as the Injury itself; which drew a universal
Clausure from all Nations, that, without being Parties to the War, they
were all treated as Enemies. *France* had made the Damage they had
the War received, and the Interruption of their Trade, a great Part of their
Quarrel, and one of their Grounds of their Conjunction with the *Dutch*. From
Spain, which really would better to us than our Enemies, the Complaint

that his Majesty desired nothing more than a just and an honourable Peace, and upon such Conditions as might make it lasting.

While this Matter was in Agitation in France and in Holland, the Swedish Ambassadors earnestly solicited for an Answer to the Letter they presented to his Majesty from the States, concerning a Neutral Place; which put his Majesty to another Dilemma. Not to answer any answer, would be interpreted a Refusal of the Treaty, and to make his Majesty appear to all Christian Princes to be better pleased with no War. To accept of any of those Places infested from the Dutch, would be against his Dignity, in so far as contradicting to the unreasonable Impudence of the King of France; and yet to nominate any Place in Flanders for the Treaty, after France had so positively declared itself, would be interpreted both by France and Holland as a Rejection of the Treaty, at least would make France look suspicious for a good End of it. When his Majesty call'd a Committee of the Board to consult upon them, his Majesty call'd a Committee of the Board to consult upon them, which I am sure I have not heard of before; which was, to make Choice of the Hague for the Place to treat in. The Confederation in Holland, in sending his Ambassadors to treat in their own Province, was not, upon a Disquisition of it, thought to be of that Importance, as to neglect the Benefits and Conveniences which might result to be expected from the having it in that Place. The People were not only naturally very weary of the War, and desirous of a Peace, but the States themselves were very much divid'd, and Dr Witt had been exposed to many Difficulties and reproaches under the Character of being the sole Person who directed the Prosecution of the War; and he had prevailed more by raising upon him to assist the States, than the King had any Thoughts of Peace, but only laboured to separate France from them, and divide them amongst themselves. There could not be a greater Manifestation of his Majesty's sincere Desire of Peace, than by offering to send his Ambassadors to the Place where the Body of the States themselves refused, and who would be the only Judges of the Reasonableness of what his Majesty should propose; and by being upon the Place might give all Expectation to the Work: Besides, that all other Princes concerned had their Members likewise there; and therefore if his Majesty's Overture in this Particular should be rejected, all the World would conclude that the Dutch would not endure to touch as to Peace. And upon this Reason the Resolution was taken to send the Hague for the Place of the Treaty, and his Majesty's Letters were dispatch'd accordingly.

The first News we heard from Paris and the Hague, after the Earl of St. Albans being arrived there, and the Baron De Jöle at English, was a great Complaint, that the King had sent the Baron De Jöle privately to the Hague with Offers of Peace; but especially with Design to divide Holland from France, and to persuade them to break their Alliance with them; in which there were some particular Expressions which his Majesty had in such used to the Baron De Jöle, and many other which he had never said. The King had Reason to conclude from hence, that Dr Witt was never to be treated with privacy; and that the Baron De Jöle was not to be trusted, he having persuaded and prevailed with his Majesty to give him Leave to speak with Dr Witt upon some Letters he had sent the King from Monsieur Fagon, the Emperor's Envoy at the Hague, a Gentleman not unknown to his Majesty, and of a very clear Reputation, wherein there was Mention of a Dilemma made by Dr Witt to him, which might very well encourage the King to give that in Charge to the Baron, which his Majesty had in truth considered to him: Not in truth had it been material, if he had said no more than his Majesty gave him Leave to do; which yet he promised not to mention, except he clearly discerned the other to be very willing to deal as freely with his Majesty; but it plainly appeared that the Baron had far exceeded his Commission, and said many Things for which he had not any Power, and which in truth had never pass'd in Discourse between the King and him. And as the Earl of St. Albans had always expressed the greatest Prejudice, and the most bitter Jealousy, from the Time that the Baron was defected for England, as a Person who delighted in nothing so much as in quarrelling and perverting, and creating Intestines in all Treaties in which he had ever been engaged, which had been many in several Courts of Christendom, so indeed his Part was most proportioned for embroiling and for preventing any Conclusion, in which he gave himself Leave to say and do any Thing which he thought would contribute to his End, without the least Consideration of Integrity or Sincerity in the Matter; though otherwise it cannot be denied that he was a Man of great Parts, and of a universal Understanding in the Affairs of Christendom.

At the same time the King of France complained of the Authority given by his Majesty to the Baron De Jöle, as that he had sent the Duke of Guise the Copy of a Letter written then by the King of France himself, in which he informed them of the Earl of St. Albans being newly come to him with Propositions from the King of England in order to Peace; and that he had a Plenipotentiary Commission to treat and conclude, mentioning some of the Conditions he had offered; and therefore desired that they would arm their Ambassadors in France to join in the Treaty. This gave his Majesty great Offence, and just Cause to suspect that whatever Pretences France had made, it did not at all desire the Peace; and he had the more Reason to complain of this Injury, because there was not the least Colour or Ground of Truth in the Relation, the Earl of St. Albans having not say thing like a Commission; nor, as he protested upon this Occasion, (as he had he likewise taken Notice at Paris) and complained before he could have any Adventitious from England; he had not ever promised to have the least Power from his Majesty; nor had he ever mentioned any of those Particulars to any Person which were so formally inserted in that King's Letter to the States: And his Majesty was the more confirmed in his Belief that France would not contribute to the Peace, because they did at this very Time, with equal Passion to Dr Witt himself, oppose the Treaty at the Hague; against which they could have no Reason to except, if they had a Mind to the Peace, unless they hoped, by the Trick that a mentioned before, to have got the Treaty to Paris by a Commission to the Earl of St. Voet-VIII.

Others, which they had tried all the Ways they could to oblige, and his Majesty had as positively refused to grant, and then retired to seek on the Hague, or upon some Place in Flanders, let the Success be what it would.

During this Agitation, an Express was sent over from the Earl of St. Albans, with two Papers which he had received from Monsieur De Lamoignon, and both in his own Hand, which Originals were sent to the King; the one contained a Proposition for the Peace, that there should be no Admission of the Charges of the War, or the Damages received by it on either Side; but that it should be in his Majesty's Choice, whether all Things should remain in the State they were at present, or whether he would keep what it had taken, and were possessed of by reason of the War; or that both sides should come to an Account, and either Side be repaid by the other for the Damages it had sustained; and that after his Majesty had made his Election of these two Propositions, in such manner the Peace should be entered into in the King and the Dutch according to the last Treaty which had been made at London after his Majesty's Return.

The other Paper was a Proposition made to his Majesty, that he would promise under his Hand that he would not, during the Space of a Year to come, enter into any Treaty to the Negatives of France, nor give any Alliance against France during that Year, this Overture being made about the Beginning of March, and in Consideration hereof, the King of France would restore the Island of St. Christopher's, which he had newly taken from the English, and would undertake that the Dutch should consent to the Peace upon his Conditions formerly mentioned; and that the Treaty being made, if his Majesty desired it, as Duke of Cambridge, since it would not be possible to persuade the Dutch to consent that it should be at the Hague; which he looked upon as a Design only to encourage the Party of his Enemies: And at the same time the States went again to the King, and offered to meet at Dover or Canterbury.

Though his Majesty had, in all his Answers to the Dutch, demanded Satisfaction for the Damages he had sustained, and for the Charge of the War; and made little Doubt, if France had not entered into that Conjunction, that they would have been induced to have made some Compensation towards it, yet the Case was now altered, and they thought themselves by the new Alliance to stand upon the Advantage Ground, so that his Majesty found any Demand of that kind would not be admitted; nor, in truth, had the Use been insisted upon in any Treaties of this Age, after the longest or shortest Wars that had been made. Hereupon, after full Deliberation, his Majesty was well contented to accept of the Propositions made by the King of France for the Peace, and made choice of the First Alternative, that both Parties should be contented to enjoy what they had got without any Account, the Dutch having lost very much more than the English, and we having taken from them in Guiana, and upon that Coast, more important Places than they had taken from us: And the Restoration of St. Christopher's by the King of France, put his Majesty into the same Condition as his Plantations in the West-Indies, as he had been before the War.

When his Majesty thought that all Things upon the Matter had been adjusted, and that the last where the Treaty should be, and having been sent such an Answer from France as was particularly agreeable to what had been there desired, he received another Dispatch from thence, with infinite Excuses, and Protestations of Sincerity, that the Dutch had expressly refused to consent to a Peace, and so the King would omit and part with the Island of Palawan in the East-Indies, an Island which had been formerly taken by the Dutch from the English with very full Circumstances, and the Re-delivery thereof was promised by them in their Treaty with Ceylon, and again renewed in their last Treaty with the King, and his Majesty had sent Ships thither to receive it; which had been delivered upon the Pretence of Want of formality in the demand; it was not of the Contents of the present War, as an Indignity and Breach of Faith towards his Majesty; though they protested that it was only the Fault of their Government in those Parts, who for want of an Order from the East-India Company, though he did receive the Order of the States-General, had not refused, but delayed its Delivery; and that that, and all other Orders that could be required, were again renewed, and already sent thither, and they were confident the Piece was by that time given up. It was alleged by the King of France, that the Dutch had always declared to him, in all the Discourses which had been between them of a Treaty, that they would never restore Palawan. And Monsieur De Lamoignon protested, that he had never known that the Restoration thereof was comprehended in the last Treaty, but conceived that it would fall within the Alternative, if the King should make Choice of that; which he had done, or otherwise would fall into the Account; and concluded with a very exact Definition, that the King would rather yield in that Particular, than break the Treaty for an Island which was nothing worth for the present, nor could be made valuable in less than seven Years; with a Protestation still, that he would do all that was in his Power to persuade the Dutch to part with Palawan; but if they should deny to do it, he could not separate himself from them upon that Point, since they had still mentioned it as a Condition; but if his Majesty would yield in that Particular, all Difficulties should be removed, and the Treaty concluded without any new Obstruction. This unreasonable Intimation, and the proceeding from what had been so fully understood, which caused all Confidence from his Majesty of the sincere Intentions of France, are now to be considered what other new Scruples would arise from the one hand, and be admitted by the other. However, after a full Deliberation with his Council upon the whole State of his Affairs, and after having communicated to them all that had passed, he did resolve not to reject the Treaty, but was contented that London should be the Place; not thinking it fit, for many Reasons, to bring the Treaty to Dover or Canterbury, to give the Enemy that Advantage if it should prove ineffectual, that it should be known in his own Dominions, or to make other Advantages by Influence to the People, who were generally more dissatisfied than they had Reason to be.

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And thereupon his Majesty named six hundred Habs, and Mr. Henry Coventry, for his Majesty's first-Chamber, for his Ambassadors in that Treaty, Men very well qualified for the Service, who were dispatched to *Brada* as soon as was possible, which was about the Beginning of May, *France* having promised, that the Fleet under the Command of the Duke de Beaufort should remain in the Port, and that he would use his utmost Power to disperse the Dutch, in the Entrance into the Treaty, to consent to a Cession, that so there might be no more Acts of Hostility on either Side, until it might appear what Success the Treaty was like to have towards a Peace: And concerning the Ballots of *Palermus*, he gave them Charge to sail upon the Delivery, and first to the *English* Company, who had the sole Interest in that Island, to send their Deputies to the Treaty, who should be privy to all that should be treated upon that Affair, and who might propose or accept whatsoever they thought best for themselves, towards the obtaining whereof, *France* was fully engaged to use their utmost Intercession.

What passed during the Treaty is known to so many, that I need not mention it here, every Dispatch from the Ambassadors being read and debated at the Council-Board, and when such Difficulties did arise that the Ambassadors would not take upon them to make any Conclusion without a particular Communication of the Temper, and Disposition, and Resolutions of all the Parties concerned, they thought fit that one of themselves (the Lord Ambassador Coventry) should attend his Majesty, being obliged to return with his Majesty's Answer within so many Days; and so soon as he arrived, he gave his Majesty a full Account, before the whole Council-Board, of all that had passed in the Treaty, that the Dutch behaved themselves very sullenly, and that the Authority of *De Witt* was so great at the Hague with the States, that Nobody durst oppose any thing he desired; that the *Dane*, by his Indignation, had made Demands of a very insolent Nature; that they believed that the French Ambassadors had behaved themselves very well, and done all that was in their Power to do, and had refrained the Dutch from their Insolence by Threats and Menaces, which they likewise used towards the *Dane*: In fine, he read all the Articles which were concluded between them; with all those which remained undetermined and unconcluded to, on either Side; with what the French Ambassadors related to persuade and reduce the Dutch to consent to yield to, or to desist again from in their Master's Name. Upon which Reports, every particular Article was at large debated at the Board, which took up many Days. The Ambassador said, there was not the least Hope of having *Palermus* refused to the *English*; that they had it was contained in that Alternative which the King had made Choice of; and when it was replied to them, that the Words of that Alternative clearly determined the contrary, for that either Side was to remain possessed of what they had got by reason of the War, which could not be applied to this Island, which they had unjustly taken and usurped so many Years before; and that they were obliged, by the last Treaty, to restore it, so that the War had no Operation upon that; so that they answered, That they had, according to the Treaty, sent Orders for the Redelivery of it, and that they believed it had been delivered accordingly; and that, upon the News of the War, their Subjects had re-taken it again, which would bring it within the very Letter of the Alternative: And this our *English*-India Company was so far from contradicting, that they believed it to be true, and had showed me, before the Treaty began, a Letter they had received from one of their Factors in the *Indies*, that there was a Report there, that the Dutch had delivered up *Palermus* to those who were sent to receive it, and that shortly after that they had taken it from them again; and therefore they thought that a special Article might be inserted in the Treaty, whereby the Dutch might be obliged to give it up again, if they had in truth so indirectly delivered it, that they might again repossess themselves of it, which could not but be understood to be a plain Violation of their Publick Faith, or a vile Artifice to elude it. The Ambassadors replied, that if it had been as truth delivered by them, though so indirectly taken, they could not insist upon it, but allow it to be in the Alternative; they desired only that it might be inserted in the Article, that if in Truth it had never been delivered, they should be obliged to do what so long since they should have done. The Dutch answered, That the End of this Treaty was to establish a firm Peace, and therefore they would admit of no doubtful Expressions which might cause future Disputes. The Ambassadors said, It was very evident, and the French Ambassadors had acknowledged the same to them, that they were resolved never to part with the Island, so that there remained no more to be considered upon that Particular, but whether, upon the Redelivery of *Palermus*, the War should be continued. The *English*-India Company were sent for to deliver their Opinions, and they very frankly declared, that they believed a Peace to be very necessary for the Kingdom, and therefore would not that the War should be continued upon any particular Interest of theirs; and it was evident enough, that if the War continued, their whole *English*-India Trade must be destroyed, the Dutch being so much superior in Shipping, and all kind of Strength, in those Parts. Hereupon the King related to consent to their keeping of *Palermus*, and I do not know that there was any Man at the Board of another Opinion. To conclude, after a long Debate for so many Days upon every Particular, the King resolved, with the Concurrence of the whole Board (one or two Persons only excepted), to consent to the Peace upon such Conditions and Provisions as the French Ambassadors had obliged themselves to bring the Dutch to consent to; and thereupon the Ambassadors returned with full Power, and in a short time after that Peace was concluded and published. And therefore I cannot understand how his Majesty could be deluded or betrayed in this Treaty, which passed with such a full Examination and Disquisition; and in all which Debates his Majesty himself had taken the Pains to discourse more, and to enlarge himself in the Answer of all those Objections which were forced on him; had I ever known him to do upon any other Article.

It is very true, that I had been commanded by the King to write most

of the Letters and Dispositions which had been made in the Parliament of *St. Asaph* from the Time of his going out, concerning the Treaty, his Lordship having (I presume by the same Direction) directed most of his Letters to me; and most of the Dispatches to the Ambassadors were likewise prepared by me, they being by their Instructions (without my Deliber or Privy), to transmit their Account to one of the Secretaries, or to myself: But it is as true, that I never received a Letter from either of them, but it was read instantly in his Majesty's Presence to those Lords of the Council, who attended, where Directions were given what Answer should be returned; and I never did return any Answer to either of them, without having first read it to the Council, or having first sent it to one of the Secretaries to be read to his Majesty; and I can with a very good Confidence profess to all the World, that I never did the least Thing, or gave the least Advice relating to this War, or relating to the Peace, which I would not have done if I had been willing, and to have given an Account thereof to God Almighty that Minute: And as his Majesty prudently, and possibly, and passionately desired to put an End to that War; so no Man appeared more delighted with the Peace when it was concluded than his Majesty himself did; though, as far as I could make any Judgment of the Publick Affections, the Publication of that Peace was attended with the most universal Joy and Acclamation of the whole Nation, that can be imagined: Nor is it easy to forget the general Contentment that the City and the People of all Conditions were in, when the Dutch came into the River as high as *Chatham*; and when the Difference in the Court itself was so great, that many Persons of Quality and Title in the Galleries and Privy Lodgings very indecently every Day vented their Passions in bitter Exclamations against those who had first counselled and brought on the War, wishing that an End were put to it by any Peace, some of which Persons, within very few Days after, as bitterly inveighed against the Peace and against the Promoters of it. But I am far yet from repenting or being ashamed of the Part I did in it, that I look upon it as a great Honour, that the last Service performed for his Majesty was the sealing the Proclamations, and other Instruments for the Conclusion and Perfection of that Peace, the Great Seal of England being that very Day sent for, and taken from me.

The Seventeenth and last Article is, That I was a principal Author of that fatal Council of Dividing the Fleet about June, 1666.

How far I have always been from giving Advice in the Prosecution of the War either by Land or Sea (except by being present at some of the Debates) I have at large set down before; I never in my Life having pretended, either in the Time when I served his late Majesty during the War, or in this King's Time, to understand any thing of that Affair: But when I have been present in Councils of that Nature, I have always governed myself by their Opinions who had the greatest Reputation of Skill in that Profession; and I never presumed less in my Life to give an Advice, than I did in this Particular concerning the Division of the Fleet; and I should make a full Answer to this Charge, if I should say no more, than that I am not guilty of it. But since it hath made so much Noise, to the Disadvantage of the King, and of the Conduct of his Affairs, and that no Care hath been taken to inform Men of the whole Carriage in that particular; I will, as I have done at large to the other Articles, for his Majesty's Honour, and for the Vindication of those of his Council who were present in those Debates, (how unjust soever many of them have been to me) set down very particularly all that I know of that Matter, and how the Fleet came to be divided; upon the View of which, I am of Opinion, what Misfortune never attended it, no Man will have Cause to be ashamed of any Fault he committed in it. From the Time that his Majesty resolved to send Prince Rupert and the General with a joint Power and Authority to command the Fleet, there was Cause enough to apprehend that there would not have been so good an Accord between them as the conducting to great a Service required; and I was then thought to have so great an Interest in both of them, that his Majesty commanded me to use the utmost Endeavours to disperse them to a good Understanding towards each other; and I believe they will both confess, that I performed all the Offices I could, and with some Success, so that good End: And I was the more cautious in it, because I found that the Prince was much unsatisfied with the Resolution his Majesty had taken, that they should both go in one and the same Ship; and that his Highness was very desirous to be in a Ship by himself, and even to command a Part of the Fleet upon any Enterprise that should offer itself, separate from the other: And there was too general an Opinion, from what Ground I knew not, that at the Time when our Fleet was ready, and when the two Generals went to it, that the Dutch were in any degree ready to come out; that the greatest Ships had not taken in their Provisions, and that they had not been enough to man the Fleet; and that they had no Design to come out of their Port all the Duke de Beaufort should be ready upon the Coast to join with them; which Fleet was then at *Brill*, and in great Readiness. I had no Part in managing the Intelligence, nor in such so much as a Correspondence by Letter at that Time, with any Man as *France* or *Holland*. The two Generals were not many Days at Sea, when my Lord *Drax* informed his Majesty and my Lords, that he had received Intelligence from a good Hand, that the Dutch were in no degree ready to come out with their Fleet; and that the Duke de Beaufort on such a Day of the Month had all his Fleet ready, and by Men on Board, to take the first Opportunity of the Wind to set sail from *Brill*; that the Wind had been fair these two last Days, and therefore that it might be presumed that he was by that time at Sea, and making his Course for *Holland*: Whereupon it was concluded, whether any Order should be sent to the Fleet, that Prince Rupert with Part of it might bend his Course towards *Brill*, whilst the General, with the other Part, waited the *Hollander* at *Monroe*. There had been a long Prospect and frequent Debates upon this Conjuncture, and how advantageous a thing

it would prove, if we could have timely Advancement of the Duke of Beaufort's Motion, that the Fleet might be sent to encounter him before his Conjunction with the Dutch; and to that Purpose the Lord Arlington had taken all the Pains he could to get particular Intelligence of the Motion of that Fleet. When this Intelligence was communicated, four were of Opinion that his Majesty should send present Orders to the Generals, that Prince Rupert should, with such a Number of Ships as they should think fit, head his Course as it before-mentioned. The late Lord Treasurer and I were present at this Debate; and though we seldom offered Advice in such Cases, yet being now both of one Opinion, we did defer to the King, that he would not take upon himself to send present Orders in an Affair of such Moment, upon so Intelligence that might not be true, though we believed it to be very probable, that the Generals were like every Day to know more of the Motion of the Enemy than we could do: And therefore we humbly offered it to his Majesty, whether it might not be fit in this Case to send forth of the Council then present, and who had been the Intelligence, and heard the whole Debate, presently to the Fleet, to inform the Generals of what his Majesty had heard, and of the Considerations which had been thereupon; and if they had received no Advancement to the contrary, and upon Conference together, thought fit to divide the Fleet, and that Prince Rupert should set Sail in order to engage the Duke of Beaufort, his Majesty would be well content that they should not that Day go to Execution, with an intent to farther their Orders. His Majesty was pleased (upon the concurrent Opinion of every Person present) to approve of this Proposition; and immediately made Choice of Mr. Vice-Chamberlain, and Sir William Coventry, to use all possible Expedition to find out the Fleet, and inform the Generals of all that had passed. I must not need to say, that at this Conference, and before the Messengers were dispatched, Mr. Secretary Aylmer informed the King, that he had received Intelligence very different from what my Lord Arlington's was; which was, that the Dutch Fleet was even ready to come out, all their Men being aboard, which was likewise commended to those two honourable Persons to make Part of their Information. The Winds were so favourable, that the two Messengers went to, and returned from the Fleet with more Speed than could reasonably have been expected; they reported to the King, that they had imparted all his Commands to the Generals, and that they had had full Conference together upon it; that by all the Intelligence they had received, they did conclude, that the Dutch were not ready to come out; and therefore they thought it very countenable, that the Prince should endeavour to meet with the Duke of Beaufort; and in order to that, they had agreed before their coming away, and had agreed what Ships should attend Prince Rupert, and what should fly behind with the General, which they related should be executed by such a Time, if they did not receive his Majesty's Orders to the contrary; which his Majesty did not think fit to send, since they were of the same Mind, and so they separated each from other, as was agreed. I have heard (but I was not then present) that upon a more certain Intelligence that the Dutch Fleet was come out, Orders were sent to hinder the Prince from going out, which, if they had been transmitted with Care enough, would have come to him in Time; but there being least Negligence in that, they came not to him Time enough to return till the second Day of the Engagement; which is as well known, that I need not enlarge upon it. And this is all that I know of the dividing the Fleet; in which I do not know that any Man can be justly blamed with more Reason than all Men may be, whose Councils have not that Success which is desired; and if there were any Fault committed, I am sure there is no Colour to impute it to me, nor am I in the least Degree responsible for any Consequence upon it.

These now, according as my Memory hath been able to supply (for I have not any Paper or Note by me for my Assistance), answered every particular Charge against me; I hope so fully, that, how powerful soever my Enemies shall be yet able to appear, as they do continue very powerful, all ill-disposed Men will abate me from any Guilt. And though I neither do or can expect any thing of Justice or Integrity from those Persons who have by all the evil Arts imaginable contrived my Detraction, by insinuating into his Majesty's Ear Stories of Words spoken, and Things done by me, of which I am as innocent as I was when I was born, and other Jealousies of a Nature so odious, that them I have sent the Confidence publicly to own; yet, I say, notwithstanding all this Detraction for the present, I do not doubt that Posterity, if not the present Age, will clearly discern my Integrity and Innocence in all the Particulars which are objected against me, and lament my present Sufferings, that after so many Years of very faithful and painful Service, I should be banished my Country, and forced to seek my Bread in foreign Parts at this Age. However, it concerns me very much to wipe off one Reproach which I may seem to have brought upon myself, by my withdrawing and secretly flying out of the Kingdom, to avoid, as it may be thought, the Justice of Parliament; which, as it made the Ground and Foundation of the Act of Banishment, so I may reasonably presume that it hath made deep Impression in the Minds of many worthy Persons, who were not over-inclined to entertain a Prejudice against me, and who, by my withdrawing, may reasonably believe, that if I were in Truth so innocent as I have persuaded myself to be, I would not have declined the most severe and strict Examination of all my Actions, of which I ought to be very ambitious; and that an exact Inquiry might be made into my whole Life, from which, and from which only, if I am so innocent as I pretend to be, I might reasonably promise to myself such a full Vindication, as might amply repair me in Point of Integrity and Honour, not only to the Shame of my Enemies, but to my full Reparation for the Damages I have sustained, if I could prove such a gross Combination and Conspiracy against me as I have feared to accuse them of: And therefore it concerns me very much to make such a Defence for myself in a clear Relation of all the Motives and Circumstances which prevailed with me

at that Time to withdraw me, as may give to all such as shall be called to turn and Advice to that Purpose, and to all such as shall be called to rather undergo a Trial, than to contribute to my own Liberty, by making out to decline the Trial: And I hope that when I have made a full and Narration of all these Reasons and Motives which obliged, and even forced me to do what I did, I shall be thought by all dispassionate Men not only not to have declined and betrayed my own Innocence, but to have complied with that Obligation and Duty which I have always paid to his Majesty, and to his Service, and against which I hope, and am most confident, that God Almighty will always preserve me from committing the least Fault or Offence.

When his Majesty was pleased first to find me an Intimation of his Purpose to take the Dutch upon me, which was by the Duke of York, he vouchsafed to use all the usual and usual Expressions that can be imagined, the great Satisfaction and Benefit he had received by my Service, the Assistance he had of my Faculty, and that he was confident nothing could be objected against me, which I would not be well able to answer; but that the Parliament had committed to great Prejudice against me, that if they had but one Day longer before their last Adjournment, they would have acknowledged me of High-Treason, and that he was well assured that they continued in that Resolution, and would execute it the first Day of their next Meeting; that I well knew the Condition of his Affairs, and how much he depended upon the House of Commons for a Supply of Monies, without which he should not be able to support his Government. His Advice therefore was, that I should deliver up the Seal to him out of my own Choice, by which he should be able to protect me from further Inconvenience; and it would be so grateful to the Parliament, that he should, in Consideration thereof, receive all that he could desire from them. It will easily be believed that I was enough surprised with this Message, it being a Time when my Mind was broken with the Loss of my Wife, for which his Majesty had vouchsafed us his Royal Person to console with me very few Days before, and when my Condition in all Respects was in no Degree pleasant to me. I asked the Duke that he would procure an Audience for me with his Majesty; which his Royal Highness had not the less thought of obtaining, and made as little Doubt but that his Majesty, in respect of my Losses and Infirmities, would be graciously pleased to come to my House, which his Majesty the next day promised to do; but upon Conference with others, afterwards changed that his gracious Purpose, and appointed me to attend him in a Morning in my own Chamber at Whitehall, which, being a Ground Room, would not put me to the Trouble of going up stairs; and thence his Majesty did vouchsafe to come to me, there being Nobody then present but his Majesty and the Duke. The King received me very graciously, with all those Expressions which he had said to the Duke; and when I asked him whether he had taken any Offence at my Carriage, and whether I had misbehaved myself in his Service? He said, No, but the contrary, that I had served him very well, and that he believed no Prince had a more devoted Servant; and that the Resolution he had now taken was for my Good and Preservation; and he enlarged himself upon the Resolution the House of Commons had taken to accuse me of High-Treason, and the Prejudice they had against me. I told him, that he might possibly be deceived in that Information, and that if he examined it better, he would find that I was not a Man so universally odious to any Persons of Power and Interest to serve him; at least, that my Lord Arlington, a noble Sir William Coventry, who were my known Enemies, would not be bound to become popular than myself; that the Manifestation of his Disposition in this Matter would be so far from preferring me, that it would infinitely expose me to the Malice of my Enemies, and was upon the Matter as call for Acknowledgment to me to gratify his Majesty, and I told him then, as I had done before, that Sir William Coventry had taken upon him, upon the Day of the last Prosecution, to offer four leading Men of the House of Commons, that the Chancellor should be favoured to them, if that would content them. His Majesty told me, That he knew such state of the Combination that was against me than I did, and that he was well assured, that if I were not removed before the Parliament met, it would not be in his Power to preserve me, but if I voluntarily gave up the Place, and withdrew into the Country, he would undertake I should not receive the least further Trouble. I told him, the Seal was in his own Disposal, he might take it when he pleased, but that I would not bring the Remembrance upon myself, by voluntarily giving it up, that I devoted his Service at a Time when first I should would believe that I might be of some Use to him. His Majesty seemed to be related upon our Matters, but dissembled me with many gracious Expressions of his good Opinion, which he continued long after to do to those Persons, who of themselves taking Notice of this Discourse in the Court, preferred to speak to his Majesty, and to dissuade him from proceeding in that Matter towards me; as the Archbishop of Canterbury, the Lord General, the Earl of Bridgwater, and others; to all whom his Majesty mentioned me as a Person of whole Affection and Integrity to his Service he had an unquestionable Assurance. And I do in Truth believe, that his Majesty at that Time had been persuaded to believe that my Removal was necessary for his Service, and had in himself no Disposition towards me, in order to any further Prosecution.

As soon as the Seal was taken from me, and delivered to the King, I heard that Mr. May had asked the King's House, and told him he was then King of England, and never before; and then every Day my Enemies declared their Animosity against me; and Sir William Coventry declared publicly in all Places, that he had advised the King to remove me, as a Thing upon which his Welfare depended; My Lord Arlington had persuaded the Duke of Buckingham, that I had been the sole Person who had contrived the Prosecution that had been lately sent all him, whereas, in Truth, I had never heard any thing of it till the King told it me, and the Lord Arlington brought me the Examination which had been

been taken, and assured me those would be more proved against him; upon which I gave such Advice as my Honour and duty to do: but so far as I from Malice towards the Duke, that I did him all the Office I could with the King, and contributed at least as much as any Man, as soon as I found by the Lord *Abington* that some of the Witnesses were dead, and that the Proofs would not make all that good which he had pretended; but the Duke of *Bedford* was informed that I was the only Cause of his Suffering, and thereupon inveighed against me with his usual Liberties.

As soon as the Parliament came together, it quickly appeared that my Enemies had so far prevailed with his Majesty as to declare his own Displeasure against me, and against all those who appeared to take on all Opinions of me; and then nothing was spoken in much of as the Resolution to take my Life; and the Lady *Catherine* declared that the Duke of *Bedford* was to sit Lord High Steward of England upon my Trial, my Wagers being laid in the Court that I should lose my Head; and Sir *Thomas Osborne*, a Person of great Intimacy with the Duke of *Bedford*, had declared in the Country, before his coming up to the Parliament, that if the Chancellor were not hanged, he would be hanged himself. All which unusual Proceedings did not in the least degree terrify me; only the Manifestation of the King's great Displeasure against me (for what Cause God of Heavens knows, I cannot to this Day assign) did afflict me as it ought to do: Upon which I wrote to the King, beseeching him not to give Ear to the Reports raised by my Enemies; but to let me know in what I had offended him, and to bestow him to be satisfied with the Defence and Damage I had already received.

From the Beginning of the Prosecution in Parliament against me, seven Persons who wished me very well, and were well informed of the severe Injustices against me, earnestly desired me to withdraw myself, and thereby to provide for my Security, which I utterly refused to do. And it is well known, that the Day when the House of Commons sent up their General Impeachment of High-Treason against me, that my Couch was ready, and would three or four Hours to carry me to the House, I expecting to be sent for till the Rising at the House. When the Debate grew so hot in the House of Peers, and that after many Expostulations from the House of Commons, the House of Lords still refused to commit me to Prison, I received new Importunities from my Friends to make my Escape; and they were perfused by some who had had the greatest hand in contriving my Ruin, to believe that it would be grateful to the King, and that there should be no Means said to obstruct my going away. And when nothing of this could work upon me, the Bishop of *Hereford* (who had not earned himself to tilt towards me as those Men thought I had derived from him) first sent to the Bishop of *Windsor*, to persuade him to get me out of the Kingdom; and conferred to him, that it was the King's Desire, though he would not own it to any body else; and then came to me himself, pressing the same Thing to me; and undertook, upon his Salvation (which was his own Expression), that I should neither be stopped in my Passage, nor suffer in the least Degree in my Honour or my Fortune by my Absence; which he said I could not believe he would undertake without very good Authority; and thereupon enlarged upon the Calamities the Kingdom must suffer by this Difference between the two Houses, of which I should be looked upon to be the sole Cause, and therefore had Reason to apprehend what Benefit the People were like to

have of it; and Mr. *Erasmus* had the Chancellor in his Name, to tell the House, who had vigorously opposed my Commitment, that those House of Peers did not comply with the House of Commons, nor I myself would not only pull down my House, but the House of all their Lords who adhered to me. I told the Bishop, I was very innocent in all Things laid to my Charge, and therefore I was not to be terrified by any Threats; however, if it were thought fit for his Majesty's Service that I should myself, I would, without any Consideration, how far I might offer in Point of Reputation, submit to his Majesty's Directs as early I desired that I might have such a Pass to might secure me from being stopped, and expedite as a Spectacle to the People, and as a Man running away from Justice, which the Bishop thought I might reasonably require, and made no Doubt of finding it me accordingly. But the next Morning he told the Bishop of *Windsor*, that if the King should grant such a Pass, it might give great Offence to the Parliament, which Hazard his Majesty would not run, but renewed all the Affairantes he had before given for the recovery of my Passage: And I as positively refused to accept thereof, and so continued in my House, and spoke every Day publicly with many Persons a full Week after the Time that the Bishop had been with me, notwithstanding the daily Advice and Importunity I received from my Friends and nearst Relations to withdraw.

I pleased God that the Duke of *Dev* had been for some Weeks sick of the Small-Pox, so that Nobody had spoken with him of any Business for the Space of near a Month; but the Maligancy of the Disease being gone, his Majesty himself had, upon the last *Friday* in November, visited his Royal Highness; and having little more than, than in negotiating his Recovery, and expediting his own great Joy in it, he came again to him the next Morning early, and had some private Conference with him. And the King no longer departed from him, but the Duke bid his Wife and privately to me, and request me presently to be gone; that the should let me know that it was absolutely necessary for the King's Service; and that I might be very confident and secure, that I should meet with no Obstruction in the Way, nor undergo the least Damage in my Honour or Fortune by being gone. And upon this Authority and Command I did the next Night, on *Saturday* the last of November, one thousand six hundred forty and seven, leave my own House, and went by Coach to *Exeter*, where I embarked; and I pleased God, all a four Days struggling with Wind and Weather, I arrived at *Calcutta* on *Wednesday* following. And I did not move in the Adventure, whenever Providence I have undergone by it, than I shall always do, in sacrificing my Honour, and my Life itself, upon the least Intimation of his Majesty's Pleasure, and whenever he thinks his Service may be advanced by it. And if any Man shall yet think, notwithstanding all that I have said, that I ought not to have withdrawn myself, but to have remained there in Prison, or any other Condition they would have put me in, until I had been fully cleared upon a fair Trial, he will, I hope, have a much Compassion of me, as to think I had great Difficulties to contend with, and will lament, on my Behalf, that I am forced to undergo to hard a Fate, after the Age of Threescore Years, whereas I should have been spent in the Service of the Crown; and for the Prosperity whereof, and the Happiness of his Majesty's Royal Person, my daily Prayers shall be poured out, in what Condition soever I am so, and in what Corner of the World soever I shall be confined or confined to.

NUMBER XII.

*The Proceedings before the Lords of the Articles, &c. against CHARLES MAITLAND, of Halton, Treasurer Depute, for Perjury, in having given a false Testimony, at the Trial of James Mitchel *.*

PARLIAMENT being summoned and held at *Edinburgh* the 28th Day of *July*, 1681, by his Royal Highness, the King's High-Commissioner, on the ——— Day of ———, *William Nidd*, of *Drover*, did deliver the following Petition, or Accusation, into the Hands of the Lord Register, to be by his Lordship presented to his Royal Highness, and the Lords of the Articles.

To his Royal Highness, his Majesty's High-Commissioner, and the Right Honourable his Lords of the Articles,

It is humbly represented,

THAT, Whereas the deceased Mr. *James Mitchel* being converted before the Judges, for attempting to suborn the late Archbishop of *St. Andrews*, and his Coadjutors before the Duke of *Lennox*, his Majesty's Commissioner for the Time, and the Lords of the Privy-Council, being adduced in solemn Proceedings, against him, the said Mr. *James* to perjure this Defence, that his Confession was extorted upon Promise and Assurance of Life made to him; for proving whereof, he did address *Charles Maitland*, Lord Treasurer-Depute, as a Witness, who deposed negatively, notwithstanding that by Letters under his Hand, directed to the late Earl of *Kinnaird*, he expressly writes, That the said Mr. *James* had confessed upon Assurance made to him of his Life. And that he was brought to his Parliament would be the Lord of his right Hand, which Perjury will be clearly proven by Production of the said Letters and Deposition; for which is humbly craved, a Warrant may be granted against the Havers for Exhibition of the same, and that the Lord Treasurer-Depute may be declared infamous, and suffer the other Punishment appointed by Law in such Cases.

By *Edinburgh*,

W. NOBLE.

* This should be read after *Mitchel's* Trial, Vol. II. P. 616.

The Letters which the Petition refers to, and upon which the whole Accusation is founded, are these two that follow, both sent to my Lord of *Kinnaird*.

Edinburgh, 10 Feb. 1684.

THIS Afternoon yours came, which should have come this Morn-
ing, so that the Post is now more regular.

I read it all, and it is a full Account of all Passages: I hope shortly we may find Matters grow better, and indeed there is great Need of it here, for at present we are out of just Saturday last, in the Morning Information was given, That was Mr. *James Aitchison*, who was alleged to have been at the Archbishop of *St. Andrews*, was discovered by ——— and Sir *William Stirling*, and being sent to come down Sir *William's* own Clerk, by Sir *William* and two of his Brother's Footmen, he called to *Mr. Aitchison*, and carried him back to his House (his Signet-Office). He had a long Hair Pistol, and a short Sword about him, in Shoes and Stockings, and thought he was to arrest, yet he did not resist, though some came upon him, but Sir *Philip* was alone, till he came up his Stair. Being sent, his Name, he denied it, and carried in several others of his Acquaintance, and a Woman of the Chancellor, was committed into Prison. This Day he was examined by Order of Council, by the Chancellor, Register, Adv. Gen. and others: The Chancellor had ordered us to charge him with his being in the Register's bellm, and that he was suspected by Name with all the Adv. of In-
dignity, and to let him for his Confession, as he led to Execution.
This was done very late, and against his next Examination he confessed his being with the Rebels, but denied this Attestation of the Archbishop, yet acknowledged his being in Town at that Time, and that the Pistol he was taken with he had bought at that Time; so it was moved by one, That the Chancellor might take him apart, to see what he would then say. This being done, upon Assurance of Life, he

in *St. Andrew's*, and Duke of Lauderdale, His Royal Highness was pleased to say in the Articles, that he did not see how he, being the King's Commissioner, could give Way to any such Accusation against one of his Majesty's Servants and Officers of State, or that any such Matter should come to a Trial, unless it had been the Treasurer-Depute's own careful Defect: And thus now their Lordships having seen and considered the whole Matter, it was for them to consider what was to be done. Whereupon, the Lords of the Articles declared their Sense of the Treasurer-Depute's Innocence in this Crime of which he was accused; and they did humbly offer to his Royal Highness, that he would be pleased to transmit the whole Affair to his Majesty, and submit the same to his Royal Consideration; so the End his Majesty might declare his Royal Pleasure, both for the Treasurer-Depute's Vindication, and punishing the Accuser according to the Punish usually by Law inflicted in such Cases.

What follows is the Copy of *Mitch's* two Confessions.

Edinburgh, 10 Feb. 1674.

I, the Prefence of the Lord Chancellor, the Lords Register, Advocate, and Treasurer-Depute.

MR. James Mitchell being call'd before the Committee, and examin'd as to his Affection to the Revolution in the Year 1666, acknowledges he was in that Revolution, and join'd with them at the Burgh of *Am*, and stay'd with them until the Night before Pentecost, at which Time, at the Desire of Captain *Arnot*, he came into Edinburgh, to speak with *Mr. James Scrimgeour*, and *Mr. Robert Pennington*, and the Laird of *Pennance*, who were then in Edinburgh, and an Address to be given as to the Council, in Behalf of stay in the Revolution, declares he was in Edinburgh, and stay'd in the House of *Griffith Whytford*, in the Cannon-Gate, before he was ask'd; and having Notice from *Col. James Wallace*, *Capt. Arnot*, *John Lindsay*, and *any William*

Young, from whom he receiv'd a Harp, and set in *Southburgh*, about Eight o'Clock at Night, and immediately after midnight, was join'd with them that were there in the Revolution. Declares, that he was in the House of *Griffith* *Robertson* in *Carnie's* Close, that he spoke with *Pennington*.

Sic Subscribitur,
James Mitchell.

Ruth.
A. Pennington.
John Scrimgeour.

Edinburgh, 20 Feb. 1674.

Mr. James Mitchell, being call'd before the Committee, and examin'd as to his Affection to the Revolution in the Year 1666, acknowledges he was in that Revolution, and join'd with them at the Burgh of *Am*, and stay'd with them until the Night before Pentecost, at which Time, at the Desire of Captain *Arnot*, he came into Edinburgh, to speak with *Mr. James Scrimgeour*, and *Mr. Robert Pennington*, and the Laird of *Pennance*, who were then in Edinburgh, and an Address to be given as to the Council, in Behalf of stay in the Revolution, declares he was in Edinburgh, and stay'd in the House of *Griffith Whytford*, in the Cannon-Gate, before he was ask'd; and having Notice from *Col. James Wallace*, *Capt. Arnot*, *John Lindsay*, and *any William*

Sic Subscribitur,
James Mitchell.

Ruth.
A. Pennington.
John Scrimgeour.

It is certain, that *Mr. Noble* had, by the Advice of his own Friends, without the Knowledge of any Lord *Holmes*, published that Paper, wherein he mentioned and touch'd his Accusation, and that he had shewn the same to *John Campbell*, of *Dumfries*, Commissioner for *James II.* in 1666, when it was published by him before *Wintour*. He, in *Edin.* was pleas'd to think fit to deny it, but being immediately confronted with the said *Mr. Campbell* before the Articles, he then confess'd he had shewn that Paper published by him to that Gentleman; by which a Man may easily conclude at the Nature of both his Accusation and Accuser.

NUMBER XIII.

An Account of the digging up of the Quarters of WILLIAM STAYLEY, lately executed for High-Treason, for that his Relations abused the King's Mercy (a).

WHEREAS *William Stayley*, being found Guilty of High-Treason, at the King's Bench Bar, on Thursday the 23^d Day of November, 1678, received then his Sentence, to be driven on a Sledge to the Place of Execution, there to be hang'd by the Neck, cut down alive, his Quarters to be sever'd, and disposed of as the King should think fit, and his Body burnt; which Sentence, on *Stayley* next following, was accordingly executed at the common Place of Execution, and his Quarters were brought back, and left at *Newgate*, in order to their being set up on the Gates of the City of *London*, and his Head on *Landon-Bridge*, as Treason Quarters usually are. But the said *William Stayley* having behaved himself very penitently, from the Time of his Conviction until the Time of his Execution, which was attested by the several Ministers that visited him during that Time; And the Relations of the said *William Stayley* humbly petitioning his Most Sacred Majesty, that he would be graciously pleas'd, that his Quarters might be deliver'd back to them, to be privately buried, and not to be set up on the Gates of the City. Which his Most Sacred Majesty, out of his Princely Clemency and Compassion, was pleas'd to grant, and ordered the Sheriff of the County of *Middlesex* to deliver the Quarters to his Friends, by whom to be disposed of as aforesaid; which were delivered accordingly.

But since that, (to the great Indignity and Affront of his Majesty's Mercy and Favour) the Friends of the said *Stayley* could find no Malice to be laid over his Quarters, and with other Circumstances, according to the Manner of the Church of *Rome*, and appeared a Time for his Interment, viz. Friday the 10th of November, 1678, in the Evening, from his Father's House in *Green-Garden*, at which Time there was made a pompous and great Funeral, many People following the Corpse in the Church of *Saint Paul's*, *Green-Garden*, where he was buried. Which his Majesty hearing of was justly displeas'd, and commanded the Council of the Liberty of *Windsor* to take up the Body of the said *William Stayley*, and deliver it to the Sheriff of the County of *Middlesex*, and that the said Sheriff should cause the Quarters to be set up on the Gates of the City of *London*, and his Head on *Landon-Bridge*. The Council, according to his Majesty's Command, did immediately go to the Churchwardens of *Saint Paul's*, *Green-Garden*, and caused the Body of the said *William Stayley* to be taken up, and the Coffin to be broken open, to see that he had the right Body, which when he had done, he caused the Body to be carried to *Newgate*, and there deliver'd it to the Sheriff of *Middlesex*, to be disposed of as aforesaid.

Imprimatur November 30, 1678.

William Stragg.

NUMBER XIV.

Mr. Ireland and Mr. Groves were carried on the 24th of January, 1678-9, to Tyburn, where Mr. Ireland made this following Speech (b).

WE are come hither, as on the lost Thrones of the World, and do therefore give thanks to our oblig'd Friends.

First then, I'll do myself, that we pardon all and every one who has been any Intensity, Contumacy, or Hard in our Death.

Secondly, I'll do myself, that we pardon all and every one who has been any Intensity, Contumacy, or Hard in our Death. And as for the guilty sinners of our Tongue, to declare it, and that, if we have any Person's family therein, (although he were our Father) we would desire and deliver him, and as for ourselves, we would beg a Thousand and a Thousand Pardon, both of God and Man: But saying we cannot be forgiven, we must beg Leave to commit ourselves to the Mercy of Almighty God, and hope to find Pardon of him through Christ.

As for my own Part, having been twenty Years in the Low-Countries, and then coming over in June last Year, I had returned again, but not I have hinder'd by a Fit of Scurvy. On the third of August last I took a Journey into Staffordshire, and did not come back in Time before the fourteenth of September: so many can witness for a Hundred and more Years in Staffordshire; therefore, how I should in this Time be sitting here, I do not well know or understand.

Here *Mr. Sheriff* advertised the Print me, he would do well to make better Use of his Time, than to spend it in foolish-like Expeditions, for no Body would believe him; and that they thought much of their Time, for they would say: but such kind of Words did arraign the Proceedings of the Court, by which they were tried.

Wherefore *Mr. Ireland* concluded, and said: I do here beg of God Almighty in answer to a Thousand and a Thousand Blessings upon his Majesty, in our beloved Kingdom, in the City of *York*, and all the Royal Family, and all who are in *London*. As for the City of *York*, which has been so long in our hands, we desire their Prayers for a happy Passage into a better World, and that he would be merciful to all Christian Souls. And as for all our Enemies, we earnestly desire that God would pardon them again and again, for we pardon them heartily, from the Bottom of our Hearts; and so I beseech all good People to pray for us and unto us.

Then *Mr. Groves* said:

We are innocent; we live our Lives innocently; we pray God to forgive them that are the Causes of it.

Piercing was repeated till the Ninth of May, 1679, at which Time he was executed. Arriving at the Place of Execution, he appear'd to the Spectators (after a Manner very unusual to Persons in his Condition) with a Countenance not only calm, sweet, and serene, but even cheerful, smiling, and pleas'd, solemnly protesting upon his Salvation, He was innocent in Thought, Word, and Deed, of all that was laid to his Charge. Then devoutly praying for his Accusers and Enemies, he laid on the Hangman, Friend, to do his Office, and soon after, quietly left the World.

(a) To be read after his Trial, in Vol. II. Pag. 426.

(b) To be read after their Sentence, in Vol. II. Pag. 396.

Should not engage me in this Matter, to get the poor Man's Money, for that I would not do it for any Consideration! You said, indeed, you would not, nor would have me do any Thing, 'till I had seen and discours'd with the Man. You then call'd to Capt. Harb, and invited him and me to come to Dinner on the Morrow, to your Lodging; to which I agreed, and said, 'you where you lodg'd you said, you had told me oft enough, but I had not been to look to come for you, and then told me where it was, which I have now forgot, but think it was in or near *White-chapel*. After this Discourse, you know, we parted, and you and Capt. Harb left me at Derby-House, and engaged me, I suppose, to Dinner next Day; but I, indeed, desirous to be quit of any Thing that appear'd to all as the Harlots propoised to me, came not to it, nor ever heard more of it from yourself, or Capt. Harb; nor low you again, till the sixteenth I twenty-first of October. This, Capt. Atkins, you know, is all true; I agree to yourself if it be not.

Ld. Shaftsb. Come, come, Mr. Atkins, you are a seeming hopeful young Man, and, for aught I fee, a very ingenuous one: Capt. Atkins has sworn this positively against you, to whom he bears no Prejudice, or Malice, but has acknowledged several Obligations from you; and to tell you truly, I don't think he has Wit enough to invent such a Lie; be ingenuous, promise with us, and confide what you said.

S. At. I assure your Lordship, upon my Faith, which I am ready to bind with my Oath, if you please, I never said one Word in all my Life like it.

Ld. Shaftsb. Indeed, we believe Capt. Atkins to be a Man that has loved Wine and Women, and been a debauch'd Man; but whome you would say to think him to be a Rascal?

S. At. Why, my Lord, I would offer this, and submit to you to judge how far a Criminal it is to be reckless? And, however, I related also the forwarding of the King's Ship *Swiftly* to the Turks, and being near a Prisoner. To which no Answer was given.

Ld. Shaftsb. Pray, Mr. Atkins, What Religion are you of?

S. At. A Protestant, Sir, and my whole Family ever so.

Ld. Shaftsb. Did you ever receive the Sacrament, or take the Oath?

S. At. No, Sir, but was under an Intention to do it on Sunday next.

L. G. It is indeed Time.

Ld. Shaftsb. Now, I am sure you won't do it; you can't forgive Capt. Atkins?

S. At. Yes, my Lord, I assure you I can, and do; and so throw it to you, I also remit to him the Money he owes me, [about Fifty Shillings], and am ready to receive the Sacrament with a clean Conscience. I confess I have not done it, as not thinking my self oblig'd by any Employment I had to do it, and many Thousands of my Age [God Preserve] will be like me to have done it.

Ld. Shaftsb. How long have you lived with Mr. Pegg?

S. At. Four Years last August.

Ld. Shaftsb. How old are you?

S. At. Twenty-one Years, the twenty-ninth of that Month.

Ld. Shaftsb. Where did you live before you came to Mr. Pegg?

S. At. I lived, Sir, formerly with Commissioner Middleton.

Ld. Shaftsb. Then I am sure he was a Protestant; [But now you are brought into Business, and have Access to Sir James's, 'tis to be fear'd you may be otherwise, for we are apt to suspect People inclining to the Sea.]

S. At. I never had Temptation from within, or without, to alter my Religion, and hope in God I never shall. Then the Duke of Buckingham came from the other Side of the Room towards me, and said,

Ld. Buck. Well, Mr. Atkins, I'm for you before that I remember, but I fear you are an ingenious Man, and I fee (seeing a Paper in his Pocket) the great Workings of your Brain, and would gladly, for your own sake, have you declare to us what you know of this Matter.

S. At. My Lord, I can never say otherwise than I have, (I thank your Lordship for your good Thoughts of me) nor do I know one Word more.

And to this Effect, we after another, did wail of the Lords of the Committee as we me to say *Amoribus*, repeating very often their good Opinion of me, and their great Sorrows for my Obstinacy, which would bring the Prejudice to myself, while by a Confession I could not injure, but advantage myself, Captain Atkins joining with us to urge me to it, with Promises of making my Fortune thereby. I still gave the same Answer, declaring my utter Inability to say one Word, and answering I never had to Captain Atkins.

Hereupon we were both order'd to withdraw, which we did, and after a little Stay without, they call'd me again to them, and my Lord Shaftsbury began.

Ld. Shaftsb. Mr. Atkins, truly we are, every Lord of this Committee, very desirous to be thus plain with you, but here being to perform an Oath against you, we cannot answer to the Parliament the doing less than consulting you to *Negate*.

S. At. What your Lordships please, if you find me to be hang'd, I can say no more, or otherwise.

Then they again repeated their Advices severally to me, to declare what I knew, and graciously asked me if I had in first, of my knowing nothing of what Captain Atkins had sworn. At last Sir Philip Howard (who stood by all this while) told me, I could not have lived so long Time in an Office of Business, but I must know the Laws of this Nation to be such as would bring me under severe Punishment, if I should be found to contest this Matter, which I well persuaded you must know of, (says he,) for that I have to seriously and very briefly examin'd Captain Atkins about it, and I know he would not tell me a Lie. Besides, he has no Reason to do it towards you, and being a Gentleman, Son of Sir *Yonathas* Atkins, my Nephew, otherwise well related, and man's want as Edith of his Father (if he please) when he dies, he can't be thought to attempt to do it against any Body. I told him, I very well knew the Laws of this Na-

tion in that Point, and as well knew the Laws of *Guthrie* (such as would draw a worse Punishment upon my Head, if I could tell a Lie, or mention any thing to the Prejudice of another Man, and that I wish, if I had any thing in this Matter different from what I have done.

After this, I was order'd to withdraw, and Captain *Rickard*, Keeper of *Newgate*, (who waited without with the aforesaid Child, called in, and a Warrant deliver'd to him in the following Words, for his keeping me in his Custody, viz.

You are herewith to receive the Body of Mr. Samuel Atkins, for Suspicion of Felony, in concealing the Murder of Sir Edmundbury Godfrey, and him safely to keep, until he shall be releas'd deliver'd by due Course of Law: And for so doing, this shall be your Warrant sufficient. Given under our Hands and Seals this first Day of November, 1678.

To the Keeper of the Goal of Newgate, for the City of London, and County of Middlesex.

Sig'd,

Beckingham,
W. Riches,
P. Howard.

Memorandum. The Deposition made by Captain Atkins against me, from whence the Examinations proceeded, and my being committed to Prison were ground'd, hereafter follows in the aforesaid Words uttered, as they were reported by the Committee to the House of Lords, and enter'd in their Book, viz.

Die Martii 12^o Novembris. 1678.

The Examination of Charles Atkins, Esq. taken upon Oath before us, One of His Majesty's Justices of the Peace for the County of Middlesex, and Liberty of Westminster, this first Day of November, 1678.

S A I T H, That in Derby-House, being in D^o House with Samuel Atkins, (Clerk to Mr. Pegg, Secretary of the Admiralty) the last Sunday did say, That Sir Edmundbury Godfrey had very much vilified his Master, and that if he liv'd long would be the Ruin of him, upon which the said Samuel did ask this Examination whether he did think Child to be a Man of Courage and Secrecy, so which this Examination did reply, That the said Child had been at Sea, and had behaved himself very well, as he had been inform'd; upon which the said Samuel did bid this Examination send the said Child to his Uncle, Mr. Pegg, but not to turn the said Samuel, for that he would not be loath to know any thing of it. This Examination did endeavour to find out the said Child, but did not meet with him till the Day after that Discourse had happened between him and Samuel Atkins, at the Three Tobacco-Pipes in *Holborn*, where this Examination did tell Child, that Secretary Pegg would speak with him; and the next Time that this Examination did for the said Child, (after that he had given him that Direction) he, the said Child, did endeavour to engage the said Examination to join with him in the Murder of a Man. The Particulars of which, this Examination hath declared before the King and Council, Wednesday last past.

Taken before me, One of His Majesty's Justices of the Peace for the County and Liberty aforesaid.

P. HOWARD.

Upon this Deposition was ground'd the afore-said Warrant for my Commitment, by Venue whereof, Captain Rickard carried me presently to Prison, where I remained in a Room of his own House, without having Liberty to write to, or, or speak with any Body, till Wednesday the sixth Day of November, 1678, when having well remitted on what had past at my late Examination, I desired Captain Rickard to accompany the Lords of the Committee, that at their next Meeting I would pray to be brought before them; which he promised to do, and did, and on the said sixth of November, 1678, being Wednesday, I was carried by him to the Committee, consisting of the same Lords as before, then sitting at the Lord Privy-Seal's Chamber by the Parliament-House, where the following Questions were asked:

Ld. Holcar. Well, Mr. Atkins, we hope you have consider'd No. 4, of this Business, and are ready to give us some Light in it.

S. At. My Lord, I have well indeed consider'd of it, and I hope am prepar'd to show your Lordships that nothing is to be expected from me, and to my Liberty will not be denied me.

Ld. Holcar. Nay then, Mr. Atkins, if you come to that, you must say till we find for Captain Atkins, if it be sought you would fly against him, or his Accusation.

S. At. My Lord, I hope I shall continue him in several Circumstances, which I have better consider'd, and clear to you my Innocence.

Ld. Shaftsb. Why, Mr. Atkins, Captain Atkins declares to us he has much more against you, and several other Circumstances, by which he says, you'll appear the worst Man living.

S. At. My Lord, if you please, I deliver he may be free too.

Upon this I was order'd to withdraw, and Captain Atkins being sent to Sir Philip Howard's, in *St. Dunstons-Yard*, came in about Half an Hour, and meeting me in the Passage leading up the Stairs to the Chamber where the Council was sitting, I observed his Countenance altered extremely, and took Notice of it to him. He pass'd by me, and went up the stairs, and laying there on an Expedition of being call'd, I went to him with my Keeper, (Mr. Linn), and discoursing together, I said him what had induced him to being this Murther upon me, and whether he design'd to run me, that had prefer'd him from us? He answer'd, No, no, no, no. I further said him, I look'd like one that had done, or knew of any Murder, and whether he thought in his Conscience I did? No, faith he, I dare swear for you for this Matter, only these Words pass between us: Well, says I, you fly 'twixt between us, 'tis impossible to contradict your Oath, but God, you and I know, 'twas not so. Hereupon, after some little other Discourse, he went down

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Interests, for private Ends, will find they are rather troublesome than necessary; and the greatest Mischiefs they will be able to effect, will be upon themselves.

In short, it is the proper Business of this Court, and our Duty, that we take care, to take care to prevent and punish the Mischiefs of the Press. I am of this mind, with any Safety, wit and good sense; and every person, who is of this mind, will be sure to put us in the right way. So that what between the Court, and the Patriots, and the Moderates that write for him that sits, and for what they are hated, we shall be infected with the French Government, and be over-run with Lies and Labels; which is a great evil, and which we shall not, not Courage, who were worst of us, to say what they could not own.

Mr. Justice Jones.

WE have a particular Case here before us, in a Matter of Scandal against a great Judge, the greatest Judge in the Kingdom, an Criminal Cause, and it is a great and an high Charge upon him. And certainly there was never any Age, I think, since Licentious than this, as appearing Guiltless, featuring of Labels and scandalous Speeches against those that are in Authority; and, without all doubt, it hath become this Court to show their Zeal in suppressing it.

I am old enough to remember (and, perhaps, feel the Smart of it yet) the Beginning of the late Rebellion (for a Rebellion it was, and deserves no other Name). I know it had the Fore-runner of such Labels, and such attacks against the Government, as this is; and it followed almost to

the Success of the Happiness of the Kingdom. As for the Trial hinted at in this Affidavit, I was not present at it myself, I was detained by my own Infirmary, so that I could not attend that Service, nor indeed have I read the Relation of it in Print, so confidently as to give a Judgment upon it. But I am very confident, upon my knowledge of the Integrity of my Lord, and the rest of my Lords the Judges that were there, for there were all the Chief Judges, and almost all my Brethren) that that Trial was managed with exact Justice, and perfect Integrity, by them.

And therefore I do think it very fit, that this Person be proceeded against by an Information, that he may be made a public Example to all such as shall presume to scandalize the Government, and the Government, with any false Aspersions or Accusations.

Mr. Justice DOLBER.

I Am of that Mind, truly; and am very glad we have let upon one of the Druggers of these Scandals. I was present at that Trial, and, for my Part, I think the Scandal so my Lord Chief Justice was a Scandal to all that were there; for if he had misbehaved himself in such a Manner as has been reported, we had been strange People to sit still and say nothing, or not interpose to rectify wherein he did amiss. And therefore I desire this Man may be proceeded against, for an Example to others.

May 29, 1680, this Richard Radley was convicted of speaking scandalous Words against the Lord Chief Justice Burgess, and fined 200*l*.

NUMBER XX.

Mr. THWING being condemned at the Summer Assizes at York, and after three Months Reprieve, was at last, viz. October 23 next ensuing, Hanged, Drawn, and Quartered, at the usual Place of Execution there: Arriving at the Gallows, he delivered in Writing the following Speech.*

THIS sudden News of my Execution (after my Reprieve) coming so unexpectedly, made me (as I should have more Security feared me than has been to others) and, consequently, that I should not love my tall Liberty, to declare my Mind in the Place of my Execution, therefore I have briefly expressed myself in Writing, as followeth.

First, As I hope for Salvation and Benefit of the Blood and Passion of my Beloved Saviour, I most sincerely protest, that what Rich. Baines, and L. Manners were against me, was absolutely false, for here, in the Presence of the Eternal God, I declare I never knew of any Confess at Barnack, the last judgment to the King or Kingdom; nor was I ever at any such Confess, or Meeting, with Sir Thomas Gascoigne, Mr. Gascoigne his Son, Sir Miles Stapleton, the Lady Toppoff, Mr. Ingley, or any other, where any thing was treated, spoken, or written, about killing the King, or Murther of the Government, nor did I ever see, or know of any List of Names of Persons mentioned, and sworn by them against me.

Secondly, Upon my Salvation I declare, that I never had been in my whole Life-time guilty, even so much as in Thought, of any Treason against his Majesty, or the Kingdom, being directly contrary to the Principles of our Faith.

Thirdly, That although I have, and do declare against the Oath of Allegiance, as it is worded, yet it is only by reason of some Clauses there-

in contained, not pertaining to Allegiance; and therefore if an Oath, containing nothing but Allegiance, had been legally tendered me, I should have thought it a Sin to refuse it.

Lastly, I acknowledge myself a Priest, and to have (about Fifteen Years) performed the Priestly Function; which I am so far from denying, that I thought it the greatest Honour imaginable.

Now, dear Countrymen, having made this Protestation in the most plain and serious Terms I could, without all Equivocations, or mental Reservation whatsoever; I appeal to the Eternal Judge, whether all good Christians ought not rather to believe what is here in this manner sworn by me, in my present Circumstances, than what was sworn by my Accusers, whom, notwithstanding, I beg of God Almighty to forgive, as also the Jury, and all others, who have, in any kind, concerned to my Death.

Then again professing his Innocence, and praying for his King and Country, he concluded with these seeming Prophetic Words:

Though I know the Affairs of the Kingdom are in a bad Posture, yet I hope they will be cleared ere long; and then the Actors thereof will be more fully known.

NUMBER XXI.

The Examination of Captain WILLIAM BEDLOW, deceased, relating to the Popish Plot; taken in his last Sickness, by Sir Francis North, Chief Justice of the Court of Common-Pleas. Together with the Narrative of Sir Francis North, at the Council-Board: And the Letter of Sir Francis North, to Mr. Secretary Jenkins, relating to this Examination. Perused and signed to be printed, according to the Order of the House of Commons, by me William Williams, Speaker†.

The Examination of Capt. William Bedlow, taken upon Oath before the Lord Chief Justice North, at Bristol, on Monday the 16th of August, 1680.

THE Examination sheweth, That the Duke of York hath been so far engaged in the Plot, as he hath been by Letters in Cardinal Berber's Secretary's Study, that so Part that hath been proved against any Man already, that hath followed, but that to the full these Letters have made him guilty of it; all but what tended to the King's Death. And at Rome I asked Father Auderius, and Father Lodge, two Jesuits, What would the Duke do with his Brother when he was King? And they answered me, They would find a Means for that; they would give him no Trouble about it. Thus I told them, I believed the Duke loved his Brother so well, he would suffer so Violence to be done to him: They said, No; if the Duke could be brought to that, as he had been religiously to every thing else, they might do their Work; their other Business was ready, and they might do it presently. But they knew they could not bring him to that Point, but they would take care for that themselves. And they did not begin with him, so leave him in such Struggles as that, but they would fit him into his Torment, and there he should begin himself about three or four Days, for they had desired him they should watch the Affairs

upon, should clear their Party, and then should fly upon them with the Sword of Revenge.

And this Examination doth further add, That the Queen is not, in this Examination's Knowledge, nor by any thing that he could ever hear out, any way concerned in the Murder of the King, but barely by her Letters confirming and promising to contribute what Money she could to the introducing the Catholic Religion. Nay, twice a great while, and it made her weep, before she could be brought to that.

William Bedlow.

Paris, 26 du Aug. 1680,
ceux me,
Frs. North.

The NARRATIVE of Sir FRANCIS NORTH, Lord Chief Justice of the Common-Pleas, at the Council-Board.

AT my first coming to Mr. King's House, where I was to lodge at Bristol, upon Monday the 15th Day of August in the Afternoon, being the first Day of the Assizes, Sir John Knight came to me, and said, That Mr. Bedlow lay dangerously ill of a Fever, and had little Hopes of

* Bedlow having been so remarkable a Witness in the several Trials of the Popish Plot, it is thought proper to insert here what he declared upon Oath to the Lord Chief Justice North, some Days before his Death, (which happened August 20, 1680,) which should be read after Duke Trist, as Vol. II.

My Lord Mayor,

I AM, by the King's Command, to tell you, That he hath consider'd the humble Petition of the City of London, where so many of the greatest Magistrates, and other eminent Citizens, are of undoubted Loyalty and Affection to his Service; that, for their sakes, His Majesty will show the City all the Favour they can reasonably desire.

It was very long before His Majesty took Resolutions to question their Charter: It was not the seditious Discourses of the Coffee Houses, the treacherous Pamphlets and Libels daily published, and dispersed thence into all Parts of the Kingdom; the outrageous Tumults in the Streets; nor the Affronts to his Courts of Justice, could provoke him to it.

His Majesty had Patience until Disorders were grown to that Height, that nothing less seem'd to be design'd, than a Ruin to the Government, both of Church and State; for the seditious Party were not content with the Practice of these Insolencies, but endeavour'd to have them publicly countenanced by the Magistrates: And for that End, in all Elections they were to choose the most disaffected into Offices of the greatest Trust in the Government; and carried themselves with that Heat and Violence, that it was a Terror to all sober and discreet Citizens: And the City was to unhappily divide into Parties, that there was no Likelihood it could return to good Order, so long as the Factions retain'd any Hopes of procuring the Election of Magistrates of their own Party for their Impunity.

It was high Time to put a Stop to this growing Evil. This made it necessary for His Majesty to enquire into their Abuse of Franchises, that he might be in his Power to make a Regulation, sufficient to reform the City to its former good Government.

It was not for Punishment, but merely for the Good of the City, that he took this Course.

And now the King hath obtained Judgment in a *Quo Warranto*, it is not his Intention to prejudice them, either in their Properties, or Customs. Nay, lest the execution of a Judgment so sacred might have Consequences fatal to them, his Majesty was to tender them, that he caus'd *His Attorney* to forbear the same at present, that the City might have some Time to consider their new Condition.

My Lord,

I must needs say, the City hath not been well advised, to defer their Application to his Majesty till now, even till the Court hath pronounced Judgment: It had been done with a much better Grace, if it had been more so.

His Majesty's Affection to the City is too great to reject their Suit for that Cause.

But for that Reason you will have the less Time to deliberate upon the Particulars the King doth require of you.

And indeed there will be little need of Deliberation; for his Majesty hath resolv'd to make the Alterations as few and as easy as may be, consistent with the good Government of the City, and Peace of the Kingdom. They are these:

His Majesty requires your Submission to these Regulations:

That no Lord Mayor, Sheriff, Recorder, Common Serjeant, Town-Clerk, or Councillor of the City of London, or Steward of the Borough of Southward shall be capable of, or be admitted to the Exercise of their respective Offices, before his Majesty shall have approved them under his Sign Manual.

That if His Majesty shall disapprove the Choice of any Person to be Lord Mayor, and signify the same under his Sign Manual, to the Lord Mayor, or, in Default of a Lord Mayor, to the Recorder, or Senator-Al-

derman, the Citizens shall, within one Week, proceed to a new Choice. And if his Majesty shall, in like Manner, disapprove the second Choice, His Majesty may, if he so please, nominate a Person to be Lord Mayor for the ensuing Year.

If his Majesty shall in like Manner disapprove the Persons chosen to be Sheriffs, or either of them, his Majesty may appoint Persons to be Sheriffs for the ensuing Year, by his Commission, if he so please.

Nevertheless, the Estates of these Officers may be according to the ancient Usage of the City, with single Restrictions.

The Lord Mayor, and Court of Aldermen, may, with Leave of his Majesty, displace any Alderman, Recorder, Common Serjeant, Town-Clerk, Councillor of the said City, and Steward of the said Borough.

Upon the Election of any Alderman, if any of the Peers that shall be presented to the Court of Aldermen by the Ward shall be judged unfit, upon such Declaration by the said Court, the Ward shall proceed to the Choice of other Persons in the Room of such, or as many of them as are so disapproved: And if the said Court shall disapprove such second Choice, they may appoint any others in their Room.

The Justice of the Peace to be by the King's Commission, which his Majesty will grant according to the usual Method; unless upon extraordinary Occasions, when his Majesty shall think it necessary for his Service.

These Matters are to be settled in such a Manner as shall be approved by his Majesty's Attorney and Solicitor General, and Council learned in the Law.

My Lord Mayor,

These Regulations being made, his Majesty will not only pardon this Prosecution, but confirm your Charter in such Manner as may be consistent with them.

The City ought to look upon this as a great Consideration on his Majesty's Part, it being in the Nature of a Reversion of a small Part of what is already in his Power, by the Judgment: And of those Things which will conduce as much to their own Good and Quiet, as to his Service.

If the City should look upon it with another Eye, and neglect a speedy Compliance; yet his Majesty hath done his Part, and demonstrated his Affection to the City, by giving them that Opportunity.

And if there shall be any heavy Consequence of this Judgment, which it will be upon you well to consider, the Fault will lie at their Doors, in whose Power it now is, to bring this Affair to a happy Conclusion.

My Lord Mayor,

The Term draws towards an End, and *Midsummer-Day* is at Hand, when some of the Officers are to be chosen, whereof his Majesty will relieve the Appointments; therefore it is his Majesty's Pleasure, that he may return to the City, and consult the Common-Council, that he may speedily know your Resolutions thereupon, and accordingly give his Directions.

That you may see the King is in earnest, and the Matter is not capable of Delay, I am commanded to let you know, he hath given Order to his Attorney-General to enter up Judgment on *Saturday* next, unless you prevent it by your Compliance in all these Particulars.

But the City not complying, Judgment was enter'd. Vide Vol. IV, Pag. 551, 552.

NUMBER XXIII.

An ANTIDOTE against Poison: Composed of some Remarks upon the Paper printed by the Direction of the Lady Ruffel, and mentioned to have been delivered by the Lord Ruffel to the Sheriffs at the Place of his Execution (a).

[By Sir Bartholomew Shower.]

THE publishing of this Paper, as the last Speech of a dying Man, cannot but surprise all Persons who were present at the Trial of the Lord Ruffel, to read such Reflections upon the Judges, the King's Counsel, the Sheriffs, and the Jury; the Fact is universally represented, and the Offender's Innocence is strongly asserted, when they can all sit still to the Pursuits of his Trial, the respectful treating of him by the King's Council, as far as was consistent with their Duty, without any Strains upon the Evidence, to the favourable Discreetness of the Court towards him, not in the least aggravating the Crime beyond the Evidence, and so the Fallacies of the Evidence upon the Proofs produced: And therefore those who heard the Evidence must acknowledge, that that Paper is so far from containing the whole Truth of the Lord Ruffel's Case, that what of Truth is therein intimated, is wholly disguised, and artfully, and uncharitably set down. Neither doth the Lord Ruffel, in his Speech to the Sheriffs, ever all contain'd in that Paper to be true, nor the Paper to contain the whole Truth of his Case; only such, he had set down in that Paper all that he thought fit to leave behind him. No doubt, he might as well have said, All that his faithful Confessor advised him to leave behind him.

For whosoever strictly peruseth the Paper, will not find the Ingenuity, Sincerity, or plain Style of a dying Gentleman, may discover the peculiar Distinct of an Assail, accus'd to shadow Truth with doubtful and ambiguous Expressions; and the Paper artfully contrived and design'd

to gratify a Party by a colourable asserting the Innocency of the Criminal, condemn'd by the Law for High-Treason, and laying a malicious Imputation upon the Government, for an unjust Prosecution of an innocent Person to Death.

Whether the Paper doth truly state the Crime, upon the Fact proved, for which the Lord Ruffel was condemn'd; and whether it contain any plain Denial of that Fact; will best appear by truly stating the Crime charg'd upon him by the Indictment, and the Fact proved upon him at his Trial.

The Lord Ruffel, with others, are charg'd by the Indictment with High-Treason, for conspiring, compassing, and imagining the Death and Destruction of the King, and raising of a Rebellion within the Kingdom. And the Overt-Acts whereunto they are charg'd, are their meeting together, consulting and agreeing to raise an Insurrection and Rebellion, and to raise upon the King's Guards.

At the Trial, Colonel Ruffel did swear, That there was a general Rising intended in October and November last, and that he was engaged therein; and that the Earl of Shaftsbury, who was likewise engaged therein, in November last, acquainted him, that the Duke of Monmouth, the Lord Grey, Lord Ruffel, Sir Thomas Armstrong, and Mr. Fergyn, were to meet at Mr. Shophard's House in *Sharders-Lane*, and sent him thither with a Message to them; that accordingly he went thither, and found the Lord Ruffel, and the rest there, and delivered to them the Message

(a) To be read after Lord Ruffel's Speech, Vol. III. Pag. 448, 449, and 450. It is observable, That in the *State-Trial*, Vol. III. Pag. 679, is inserted Sir Robert Aikley's Defence of the late Lord Ruffel's Innocency: By way of dispute or Confutation of a Libellous Pamphlet, intitled, *An Antidote Against Poison*. But the *Antidote* itself (withally's 3 support) contains.

from the Earl of Shaftesbury; which was, That it was high Time to come to these Resolutions about the Rising; That Answer was returned, That Mr. Trevelyan had assured them, That, in four Hours Time, one Thousand Foot, and two or three Hundred Horse should be ready at Twickenham; but now Mr. Trevelyan required two or three Days Notice of the Rising, and therefore they could not go on at present; and that my Lord Shaftesbury would be consulted.

He said, The Answer was pronounced by Mr. Fergyn, and the Lord Grey spoke to the same Purpose. And being interrupted, whether the Lord Ruffell were to rise to hear the Message, he said he was so near, and could not but hear it. And being asked by the Lord Ruffell, whether he consented to the Answer, he declared upon his Oath, that the Lord Ruffell did consent; and that they then treated and consulted of the General Rising; And both Colonel Ramsey and Mr. Skelton did swear, That the Lord Ruffell and the self did consent at Mr. Skelton's about joining of the King's Guards. And having at a former Meeting appointed some of their Number, viz. the Duke of Monmouth, Lord Grey, and Sir Thomas Armstrong, to view in what Posture the Guards were, they made Report to the rest there. That they found them very remote in their Duties, and might be easily seized. Mr. Skelton swore, That their Meeting at his House was secret, but appointed by themselves; and that they came late in the Evening; and that my Lord Ruffell was not any person. But that he told him; neither had he then any private Business with the Lord Ruffell. But the Lord Ruffell pretending he came to take some Sherry, which he had brought from Mr. Skelton, Mr. Skelton denied upon his Oath, that the Lord Ruffell had brought any Sherry of him, or mentioned any such Thing then to him.

The Lord Howard gave in Evidence upon his Oath, That there was a Design of a General Rising, both in October and November last, and that the Earl of Shaftesbury then acquainted him, he had Ten Thousand brisk Boys ready. And after the Departure of the Earl of Shaftesbury, it was thought necessary, for the preventing of Confusion, and more orderly managing of the Rising, that a select Council should be held for that Purpose. And accordingly, the Duke of Monmouth, the Earl of Essex, the Lord Ruffell, Colonel Ramsey, Mr. Skelton, Taylor, and himself, met in January last, at Mr. Skelton's House in Ruffell-Street, and debated certain Preliminaries to the Rising. Amongst others, Whether the Rising should be in London first, or in the Country first, or in both at once? And the major Opinion inclined to have the Rising both in London and the Country at one Time. That soon after, they held a second Meeting at the Lord Ruffell's House, where all the last mentioned Persons were present; and where they again debated of the Rising, and then came to this Resolution, That some Person should be sent into Scotland, to invite some Persons thence, from the discontented Scots, to treat with them, that they might be assured of what Assistance they might expect from the Scots: That that Matter was committed by them to the special Care and Conduct of Colonel Skelton; And that Col. Skelton acquainted him he had sent some Person into Scotland accordingly; and that he had given him therefore Guidance to delay the Charges of his Journey.

The Lord Howard, interrogated by the Lord Ruffell, Whether he said any thing in those Debates, declared upon his Oath, That though his Lordship never said to speak much, yet he did speak in those Debates, and consented to what was done.

This was the Substance of the Evidence, though delivered by the Witnesses more at large, as will appear by their Depositions, printed with the Trial. A clearer Evidence to prove the Facts charged, of meeting and consulting to raise a Rebellion within the Kingdom, and to seize the King's Guards, I believe the most experienced Person in the Laws can never draw was ever produced at the Trial of any Traitor. To the great Strengthening Part of the Evidence, which is that of the Lord Howard, and of much of Colonel Ramsey's, I have added some other Evidence, of which the Witnesses make full Proof, the Paper gives no Answer at all. With what Confidence then can the Author of that Paper introduce a dying Man, asserting his own Innocency, and charging the Jury with Forwardness and Injustice, when the Criminal cannot deny the Facts upon which the Jury gave their Verdict? But these Facts, whether true or false, the Criminal would not examine. And if he could not, or would not assert them to be false, no Man of any common Integrity can doubt them to be true, when sworn by credible Witnesses, and found by a substantial Jury. Yet, to satisfy the Conscience of a dying Man, and to cover the Scandal of so great a Crime from vulgar or partial Eyes, these Confessions and Confessions to raise a Rebellion, and seize the General Rising, are repeated to the People only as some Discourses about some Scots. They may be in Scotland some Scots, but in England they are, and ever were, Seditious Rebels.

As to the other Branch of the Over-Acts, of consulting to seize the Guards, which the Paper makes the only Crime for which the Lord Ruffell was condemned; this Account is given by the Paper, That the Lord Ruffell was at Mr. Skelton's House with that Company but once, and there was no Undertaking then of seizing and seizing the Guards, nor none appointed to view or examine them: Some Discourse there was of the Feasibility of it, and several Times by Accident in general Discourse elsewhere.

This Account which the Lord Ruffell gives of this Matter is rather a Confirmation of the Testimonies of Colonel Ramsey and Mr. Skelton, than an Avoidance thereof: He admits the Feasibility thereof was then discussed of, and at other Times likewise. They swear, That the Persons appointed to view the Guards, reported them, they found them to be very remote in their Duties, and might be easily seized. The Lord Ruffell remembers he was at Mr. Skelton's House but once; Skelton swore he was there with that Company twice; and at the last Time the Report was made after viewing of the Guards.

The seizing of the Guards was not the only nor principal Fact upon which the Lord Ruffell was condemned, as appears by the Proof before; but it was one of the Influences to make out against him the general Design of raising a Rebellion, as one of the proper Ways to secure the General Rising, and was sufficiently proved by two Witnesses to have been consulted upon to that Purpose.

Indeed, to what other Purpose can any Man imagine the Lord Ruffell, and his Accomplices, who appeared to have been engaged in a Design

of a general Insurrection, upon such Proof as the Criminal could not deny the Facts, should so often discourse of the Feasibility of securing the Guards, as is evidenced by the Lord Ruffell, than in order to facilitate and secure their Design of the General Rising? And the Discourse the Paper owns to have been at the Lord Shaftesbury's, touching the first Matter, who throughout appears to be a principal Agent in the Design of the General Rising, proves the seizing of the Guards to be Part of the Design. And though the Lord Ruffell then expressed a Tenderness of shedding cold Blood, as a Thing detestable, and so like a Popish Practice; yet that Deluge of Blood which most successfully has ensued in the Hearts of a General Rising, which is evident he pursued to his last, did not at all affect him, because this might become any heretic Christian drawn in Armour by the Pencil of the Author of *Julius*; and is not unlike to the Practices of the ancient Chirillians, so basely disguised by the same Author.

If then the Facts whereof the Lord Ruffell was found Guilty by the Jury, upon such pregnant Proof, be evident, how is it possible for a dying Man, before God and Men, to assert his Innocency with such Assurance, and so frequently repeated in his Speech to the Sheriff, though short, yet twice repeated? 1. A God knows how far I was always from a Design against the King's Person, or of altering the Government. 2. I protest I know of no Plot, either against the King's Life, or the Government.

In the Paper delivered, it is thus expressed: 'Whatever Approaches I gave I had of Popery, and of my own fervent and heavy Share I was like to have under it, when it should prevail, I never had a Thought of doing any Thing against it, basely or inhumanly, but what could consist with the Christian Religion, and the Laws and Liberties of this Kingdom.' Again: 'I have always loved my Country much more than my Life, and never had any Design of changing the Government; and would have suffered any Extremity, rather than have consented to any Design to take away the King's Life.' In another Place, he thinks God his Part was honest, and well meant, and affirms his Crime to be but a Design of Treason at most; and asserts, 'I did intend of the Crime of Treason at most; for I do not think I was guilty of any other Crime, or of Treason.' In the last Place, he concludes: 'As I never had any Design against the King's Life, or the Life of any Man whatsoever, so I never was in any Controversy of altering the Government.'

Half an Eye may see these Strokes are all drawn by the same Hand, with all imaginable Skill, to quash the Conscience of a dying Criminal; and at the same Time, by calling a Mill before the Eyes of the unthinking Multitude, to pollute them with the Innocency of the condemned Person, and the Cruelty of the Government towards him. Let it be considered with what careful Reflections and Lamentations his Innocency is asserted in: That he knew of no Plot or Design against the Person of the King, or to kill the King, or to alter or change the Government: That he never had a Thought of doing any Thing basely or inhumanly, but what could consist with the Christian Religion, and the Laws and Liberties of this Kingdom: That his Crime was but Misprision of Treason at most, and so he is innocent of the Crime he stands condemned for. What need of all these Cautions, Restrictions, and evasive Circumlocutions, to a plain Man, at the Hour of his Death, to express his Innocency by? If it had been real, a few plain Words would have done it better; viz. That he was not engaged in, nor knew of, any Design of making an Insurrection or Rebellion within the Kingdom. He heard the Proof made, and knew that was the Crime laid to his Charge, which is High-Treason, both as Common Law, and within the fifth Branch of 25 E. III. But that was too clear a Matter for a dying Man plainly to deny, his Conscience must have controlled him.

And let every Man understand the Subtlety of that Paper in Declaration of the Lord Ruffell's Innocency, with such Restrictions, and so necessary to be known, that there were two Parts in this horrid Design: one was a General Rising, managed by a select Council, whereas the Confederates, according to their different Principles, had their different Ends; some were for a Commonwealth, though the fewer in Number; others were for continuing the Monarchy and Government, but with Exclusion of his Royal Highness. Of this latter Sort were the Duke of Monmouth, and the Lord Ruffell, who plainly sets down in the Paper the Duke of Monmouth's Opinion of him, That they were both of a Temper. And the Lord Ruffell gives his Opinion of himself, That his Ensigns of the Master of the Bill of Exclusion had no small Influence in his project's Success: Though opposed by him with great Reflection upon the Government, yet it truly seems to have been the natural Cause of those Extravagances he was led into, by Zeal in that Matter transporting him to seek that by Force, which the King had before denied in a Court of Parliament.

The other Part of the Plot was downright assassinating of the King and the Duke of York; this was managed by a Council of Ruffians, who, according to their Principles, judged this the most expeditious and safest Way to secure the General Rising, and render it more effectual. This was made out beyond all peradventure by many Witnesses at the Trials of Captain *Wolton* and *Hove*, the latter whereof, besides the Proofs against him, confessed himself to be one of the Number who had engaged themselves to kill the King. For this latter heinous Fact of killing and assassinating, the Lord Ruffell was not accused thereof, nor any Proof offered to make it out.

And therefore his Request of President of his Innocency, as to any Plot or Design upon the King's Life, or to kill the King, or his knowing any thing thereof, and of his Abhorrence thereof, as an inhuman, base, vile, and barbarous Act, (which Epithets the Paper gives to that fact) *Paris*, are no plain Declarations of his Innocency as to the Crime charged and proved upon him, of conspiring and consulting to raise an Insurrection within the Kingdom.

And 'tis evident, by the Lord Ruffell's restraining the Expression of his Innocency to the Design upon the King's Life, and to killing of the King, and entering to mention the General Rising, which was fully proved upon him, that the Lord Ruffell intended only that Crime for which *Hove* and *Wolton* were condemned, of assassinating the King.

The other Restriction of his Innocency, as to any Design for Alteration, or Change of the Government, which he asserted the best in the

People themselves have looked on, and examined his Evidence, by their late open and avowed Violations of our Rights, Liberties, and their late House of Commons will vindicate the Liberties of former Parliaments, and discharge your Petitioner from any necessary and scandalous Judgments, and the unjust Imprisonment of your Petitioner.

Your Petitioner doth therefore most humbly beg your Lordships and your Honours, to take this opportunity to lay out your goodness and tender Consideration, and to give your justest Orders, as your Lordships and your Honours graciously will, Justice and Goodwill shall from me.

And your Petitioner shall ever pray, &c.

In the House of Peers, on the Fifth day after the Judgment against
THOMAS OATES.

Die Sabbato, 25 Marti, 1689.

WE differ, for these Reasons:

1. For that the *Kings Bench*, being a Temporal Court, made it Part of the Judgment, that *John Oates*, being a Clerk, should for his said Perjury be deprived of his Canonical and Priestly Habit, and be forever disabled all his Life; which is a Matter wholly out of their Power, belonging to the Ecclesiastical Courts only.

2. For that the said Judgments are barbarously inhuman and unchristian, and there is no Precedent to warrant the Punishments of Whipping and Committing to Prison for Life, for the Crime of Perjury; in which yet was but one Part of the Punishments that were inflicted upon him.

3. For that the particular Matters upon which their Indiscretions were founded, were the Points objected against Mr. *John Oates* by his Testimony, in several of the Trials in which he was allowed to be a good and credible Witness, though testified against him by most of the same Persons who testified against him upon their two Indiscretions.

4. For that this will be an Encouragement and Allowance for giving the like barbarous, illegal, and cruel Judgments hereafter, unless this be reversed.

5. Because Sir *John Holt*, Sir *Henry Pollock*, the two Chief Justices, and Sir *Robert Atkins*, Chief Baron, with for Judges some (being all that were then present) for their and many other Reasons, did before us solemnly deliver their Opinions, and unanimously declare, that the said Judgments were contrary to Law and ancient Precedents, and therefore erroneous, and ought to be reversed.

6. Because it is contrary to the Declaration of the twelfth of February last, which was ordered by the Lords Spiritual and Temporal, and Commons then assembled, and by their Declaration engrossed in Parliament, and enrolled among the Records in Parliament, and recorded in Chancery,

it does appear, that excessive Bails ought not to be required, nor excessive Fines imposed, nor cruel and unusual Punishments inflicted.

Bacon,	Foxton,	Oxford,
Mordaunt,	See first,	Rush,
J. Brinkwater,	Gray,	R. Lere,
Deane,	Carroll,	P. J. Caron.
Holier,		

Edmund Knott, in his *Complete History of England*, Vol. III. says, "On May the thirty-first the House of Lords having heard the Opinion of all the Judges concerning the illegality of two Judgments given against *John Oates*, upon the Point of Perjury, for which he had brought his Writs of Error, the House did this main Question propose, *Whether the said two Judgments should be reversed?* Which being resolved in the Negative, and the said Judgments confirmed, three Lords moved that their Discretions, for the before-mentioned Reasons, "That Perjury is a Crime (says the Bishop) looked to powerfully in the House of Lords, that the following Day their Lordships, after hearing Counsel at the Bar, to argue the Errors assigned by Oates, did order and adjudge, That the Judgment given against the said Oates should be reversed: And Leave was given for the bringing in a Bill for the reversing Perjury brought from the *Procurator* which might come from his Majesty. A Bill of Reversal passed the Lower House: And upon a second Reading in the Upper, there were several Amendments made, and a *Proviso* inserted, whereby it was declared, That *none of the said Oates* for which the said Oates was committed for Perjury, were heard and determined in Parliament, the said Oates should not be received in any Court or Judge without first being by a *Writ*. Against which *Proviso* and Amendment a Petition was moved, by the Earls of Oxford, Devon, Devonshire, Montagu, Manchester, Bedford, Somerset, and Suffolk, and the Lords Newcastle, Berkeley, Cornwallis, Paget, and Mordaunt. When the Bill was sent back to the Commons, they disagreed to the Amendments: Upon which a memorable Conference began between the two Houses on July the twenty-ninth, which occasioned great Heat, that might have risen into greater Flames, if the Parliament had not been suddenly adjourned. And all that Oates was able to obtain in this Session was only, on June the sixth, an Address from the Lords, at the Commons Desire, requesting his Majesty, That whereas *Thomas Oates*, Clerk, had formerly received a *private* Punishment, for the Perjury whereof he had been formerly convicted, and that of the said Punishment would still be continued upon him, unless they should be removed by His Majesty, His Majesty would be graciously pleased to grant His Petition in the said Oath. The King readily complied with the Lords Desire: And moreover, as soon as, by their Lordships Order, Oates was discharged from his Commitment, his Majesty received him into his Protection, and allowed him a considerable Pension; which occasioned various Reflections."

N U M B E R XXX.

Informations and Examinations, taken upon Oath before a Committee of the House of Lords, appointed to inspect who were the Advisers and Prosecutors of the Murders of the Lord RUSSELL, Colonel SIDNEY, Sir THOMAS ARMSTRONG, Mr. CORNISH, and others*; whereof a Report was made by the Right Honourable the Earl of Stamford, upon the twentieth Day of December, 1689.

MR. John Phelps, Mr. Thomas Morris, Mr. Peter Hager, Mr. Robert Bates, Mr. Richard Hoyle, Mr. Horsey, and Mr. Griggs Graze, (all Persons of good Value and unspotted Reputations) being examined upon Oath, in relation to *John Knott*, deposed in Substance as follows, viz.

That *Knott*, three or four Days or a Week before his Discovery of the *Protestation Plot*, came into their Company at the *Flow Tavern* in Cornhill; where he appearing to be much disturbed and confused, one of their Company enquired of him, Why he seemed to be so disordered? To which he answered, That he lay under a great Temptation; for he was sent by the Lords in the Tower; and some Gentleman that came to him from them told him, his own Party had disabused him, and he had now an Opportunity to be revenged of them; that he could not be unfaithful of some Person that designed against the Government; and that if he would discover, he might make himself and his Family; that he had great Profers of Money, and a Place of a Hundred Pounds per Annum, and might go in a Coach and six Horses to Windsor: And that he was to meet those who treated with him again that Night, at the *Ball-Hall Tavern* near the Tower.

That upon *Knott's* talking at this Rate, one of the Company asked him, why he troubled them with this Discourse; and told him, if he knew any thing against the Government, he ought to discover it; but if he knew nothing, he would do well to keep out of such Temptations, and not go to the Meeting appointed: But he said he would go, because he had promised them in the Morning that he would meet them again; but declared that he knew nothing, and said that he acquainted them with it, because if he should be prevailed upon, by Temptation of Money, to witness any thing they should be able to witness against him, that he had declared that he knew nothing in Agitation against the Government; and that they should testify, that he was the greatest Rogue and Villain living, if he should swear against any Man.

Mr. Phelps (in particular) deposed, That he attended to have testified this at my Lord *Raglan's* Trial, but was not asked to do so in any other of the Trials, and did not appear unless desired; that he remembers not whether or no he knew of *Knott's* Trial before it was over; but that he knew not that *Knott* was a Witness against him till after the Trial was over.

Mr. Morris deposed, That he knew not that *Knott* was a Discoverer of a Plot till after *Knott's* Trial; but believes he acquainted Sir *Will. Petyway* what he heard *Knott* say before the Lord *Raglan's* Trial, and also told it to Mr. *Jones*; whereupon he was subpoenaed to that Trial, and went; but the Trial was not till three or four Days after the Time he was desired to attend; that a second Subpoena came the Night before the Trial, but he being from home did not receive it till after the Trial.

Mr. Hager deposed, That he thinks he knew *Knott* was a Witness against *Charles Holat*, but did not then offer himself to be a Witness, because Times were so difficult; but when he heard of my Lord *Raglan's* Trial, he acquainted his Lordship's Servant with what he has now sworn, and that he attended at the Trial, but *Knott* was no Witness.

Mr. Bow deposed, That he believes he told what he hath now sworn about *Knott's* Declaration at the *Finch Tavern* to twenty Persons, before the Lord *Raglan's* Trial; and that he heard *Knott* say, in the *Ansford Coffee-house*, It is reported that I have discovered a Plot of the Duke of Monmouth, my Lord Russell, and others; but I know nothing of it, and am innocent, and fully acquitted.

Mr. Hoyle deposed, That he remembers not that he spoke of what he has now sworn to any Person, for Times were such, he was afraid to speak of it.

* To be read after their Trials in Vol. III.

of his Highness's Judge born of the Queen, and of their Wickedness, who have nullified and degraded, what I as innocent Prince in her Imposition. I am Love and Compassion that I have for my native Country, as well as Charity, engages me humbly to employ Almighty God to be merciful to us, and not to charge the guilt of a the public Account, and thus we may not further provoke his Justice, by our wilfully continuing in Error and Mistake. I beseech him to put it into the Hearts of the Lords, &c. at their next Meeting, to examine into that whole Matter, and (if before that Time this be published) to enquire after, call for, and, if possible, retrieve those Papers that were taken with me; whereby the Obsolete will most certainly be convicted, and the Ignorant informed, the Dashed confirmed, the Eyes of all opened, and a sacred mail important Truth made apparent to the whole World.

What I have next to impart, is not left material, I leave.

[But I do not think it a proper Time to publish what follows next, and therefore, according to the Will and Desire of my dear Friend, expressed in his following Letter, 'tis referred to a fitter Opportunity: and shall now only refer what he wrote in the relating to Mr. Elliot.]

But I must not end this Paper till I have done one Act more of Justice, as well as Charity, in behalf of my Fellow-Sufferer, Mr. Elliot, who was, as I do most sincerely believe, altogether ignorant, not only of the Contents of the Papers, but even of the Papers themselves, and noway concerned, but as a Passenger; and yet, if Providence had not prevented our being all tied together, as was intended, that virtuous Gentleman had most certainly lived in our Faces, for the Prince, even at my Trial, lay stronger against him than myself: For Captain Boly did then, upon Oath (unconsciously, I think) declare him to be much more concerned and importunate than I was, to have the Persecution thrown over-board; and yet singly from my being concerned, and speaking to him on that Subject, a preponderant Evidence (injustice, as it proved, with that Jury to find me guilty upon) was drawn, that I knew what was contained therein.

But I do most heartily forgive them, and pray to God, that this poor Gentleman, by getting of Time, may escape better, and that his innocent Blood may not be lost. And I hope these Words of a dying Man (though an legal Person) may have some Weight with an impartial, conscientious Jury (if such a Jury he can get), whenever as a brought to his Trial.

John Ashton.

[This Paper, &c. came in (as it was from Mr. Ashton, before his Execution, in the following Letter.)]

SIR,
KNOWING your Friendship and Fidelity, to your, and your only, as unto safe and secure (though distant) Hands, I recommend the inclosed Papers; which chiefly relates to myself, being the first Part, I design to leave with the Sheriff; nor shall I be anxious about his Disposal of it: But the following Paragraphs, that concern the Prince of Wales, and ———, I beg you to preserve as Jewels, and publish them, either Part or all (chiefly that about the Prince), whenever Time or Occasion seems to permit or require. And as to the French of either, you may be pleased to consult A. B.'s Advice; I doubt not that sooner or later they will all be useful. And that you may the more value them, I do most solemnly protest, I have been as careful in what I have asserted for Truth, as if I were now at God's dreadful Tribunal, where I expect suddenly to appear, and by his Mercy hope to hear that ravishing Sound, Come, ye blessed, &c.

What relates to Mr. Elliot, though I design to declare as much to some, as to his Trial may give it in Evidence, yet I thought it just to leave a Record of his Innocency under my Hand.

I have nothing to add, but to request your Prayers, That God, of his infinite Mercy, would support and strengthen me in my last Moments, and take to himself,

Newgate, Jan. 27, 1692-93.

Sr, Yours,

John Ashton.

NUMBER XXXII.

*A true Account of the Behaviour, Confession, and last Dying Speech, of Captain HARRISON: Together with the Paper writ by his own Hand, and delivered to a Minister at the Place of Execution, on Friday the fifteenth of April, 1692.**

[By Samuel Smith, Ordinary of Newgate.]

HENRY HARRISON found guilty of the wilful, barbarous Murder of Dr. Clerk. He was bred up a Lawyer's Clerk; afterwards he left himself to be a Trooper in the Lord Denham's Regiment. Upon the 10th of January last, he offered to dispute with me upon the Cause of his Condemnation: I declared that whatever he said, he would do it in the Presence of the Heart-Searching God, and as if he were at the Point of Death: He did profess he would do so. He said, that he had been arraigned before for Murder; but it was only found *Misdemeanor*: That he did not after this walk so circumspectly as he ought, but was guilty of prophesying the *Jehovah*, and many great Sins, which he lived in very securely; but that God by this Death had awakened him to call to Mind those great Sins which he had committed, saying, that God had strange Ways to bring Sinners to Repentance. Upon this I advised him sincerely to justify God, as righteous, in finding him out in his Iniquities; or else Death would be more terrible, and his eternal State very hazardous, if he now united with God, and did not ingeniously confess his sinful Course of Life. Hereupon he spoke very wisely of himself, as having been of a dissolute Life; that he seldom minded the Publick Worshipping of God, nor the private Duties of Religion; that he was a common Swearer in ordinary Discourse, and guilty of numerous Sins, that he never received the Sacrament of the Lord's Supper, because it is an Obligation to amend an evil Life, which he being accustomed unto, he forgot the Sacrament, that he might not aggravate his Sin and future Condemnation. I told him, that his being unwilling to come under such a sacred Tie of Reformation, exposed him deeper into Satan's Snare of Temptation.

After that he freely acknowledged, that he had some acquaintance with Dr. Clerk, and too much Familiarity with the Woman to whom the Doctor lent Money; and that upon his not liking of the Security given for the Repayment, the Doctor would not forbear any longer: *Harrison* said, this did fret him, yet he used no threatening Words; and said, that if his Son had been accessory to his barbarous Murder, and himself knew it, he would discover him. *Harrison* made frequent Appeals to God, that he knew nothing of this Crime, in Thought, Word, or Deed. I replied,

That if he made any false Appeal to God, it would very much hazard his Salvation; yea, that this would bring his eternal Destruction upon him; and that his pretending to deny the Murder, would make him to be less credited; because two Persons who lately murdered their Wives, imprisoned themselves if they knew any thing of it, and yet, after an Hour's denying of it at the Place of Execution, confessed it at last. I told Mr. *Harrison*, that he would be an inveterate Atheist, if he should dare to die with an execrable Lye in his Mouth: He said, after all Advice, that he would at his Death deny that he knew any thing of the Murder of Dr. Clerk: He confessed, that he could not reflect on the Justice of the Court, nor the Leniency of the Jury in their Verdict, who had proceeded according to what was deposited against him; and that he expected that the Sentence of Death would pass upon him; yet he blames the Witnesses for their being so positive in their Allegations against him, when himself is clear of Murder in his Conscience: He said, that God had justly suffered a shameful Death to befall him, because he lived so long in an unhabited Course of Wickedness, without any Remorse for it till now.

This is all the Account I can give of Mr. *Harrison*; though I frequently, with others, sollied him to an ingenuous and free Confession of his Crime, assuring him, that if he durst die in the Denial of it, by any mental Retraction, or Equivocation, he would surely cast his Soul eternally.

A Copy of the Paper writ by Captain *Harrison*'s own Hand, and delivered to a Minister at the Place of Execution.

NOW I am come here to die, the People expect a Speech and Confession; for the Words of dying Men always ought to be delivered by the Survivors. I thank God, I am not an Atheist, nor a Man that makes Equivocations or mental Retractions; but was educated in the Protestant Religion. The greatest Grief I have (next unto my offending my great and gracious God) is that of my Relapse; for so Dissolute was ever as the Family before, (but I pray God give them Comfort) being all of them People of Reputation, as is well known to a great many

* To be read after his Trial in Vol. IV. Page 300.

Chances of a better Decodion, with a Tincture of Myrrh and Aloes; during which, I can safely say, I never heard any such Complaint, though I have purposely enquired.

Your Citation of Mr. Boyle's Citation from *Wallius*, if Master of Fact, might be prepossessing: And as to his finding the same diverse Times, how diligent I ever he might be, farther than draw myself unconvinced to him, by saying 'his tale, I shall turn Sceptique, and disprove my self till I am better satisfied: And, I protest I cannot live, if there was an Admission of Air, through Pores much smaller than those made by the longer Sort of Peas, into the Cavity of the Chest, how Respiration could be carried on. And I must needs think, that Dr. Boyle's Remark upon the Trial is very pertinent; where he tells us, *There is a great Providence in such a Texture; for if (such be) there were any large Pores in this Membrane, the Air would pass through into the Cavity of the Thorax, and prevent the Distention of the Lungs, and consequently there would be an End of Breathing.*

But that I might put this Master yet further out of Controversy, being willing to be made sensible of the utmost Effects of a drowning Creature, and the Relief of the most violent Struggles it could make to save itself, I sent for a Dog, and left you should find Fault had I made use of a Tube, I intended the Use of a Driller's Back, which, if I may call it so, is a Sort of Trough, containing in Dimension thirty Feet of Length, and half as much of Breadth: Into this, when filled with Water, I caulked the Animal so he cull, having before ordered his Fore-Foot to be tied together.

By the Force of the Fall he was plunged over Head and Ears, and after rising up again, made to the Side as well as he could; and though several Times repulsed, continued struggling, and by the Liberty of his Hind-Foot often raised his Head above the Water: Upon which, being no Likelihood of his being drowned under a very long Time, I ordered him to be taken out, and his Hind-Foot also to be fastened together. Thus he was a second Time thrown in, and continued struggling, sometimes up, and sometimes down: Water, reaching his Head and Neck, in a Quarter of an Hour's Time his Navel flared, and from there there was a visible Protrusion of the Intestines: Having thus continued while he had the Liberty of an imperfect Respiration, it was half an Hour before he had done struggling; after which, under Water he gaped several Times. When done, I left him, and returned five Hours after; at which Time I desired he might be taken out with his Head erected, that we might lose no Water.

I think, if it had been possible, I had Reason in this Case to expect Water in the two Cavities, *i. e.* the Thorax and the Abdomen, which seemed much terrified; but was so far from it, that upon the opening the Foramen, without an Inundation, I found not a Drop of Water; and even the small Arteries had received very little, if any at all from the *Pulmones*. What was contained in the Stomach was much short of half a Pint, or little more than four or five Ounces. Having raised the Sternum, we perceived the Thorax, in like Manner as the Abdomen, perfectly clear of Water. Out of the Windpipe there issued a spongy Matter, and the whole of what we perceived from its *Raniscium* was about three Ounces.

Thus, Sir, have I given you a faithful History of the Fact; but if you think the Experiment was made clandestinely, or that the Dog was made strange before thrown into the Water, as you justly intimate about Mr. Cropper's Experiments, for your further Satisfaction, you may be assured of Mr. Harcourt without *Hypocrite*, of Thomas Simpson, Esq. Gentleman Porter to the Tower of London, Mr. John Lincolns, Surgeon, with sundry other Physicians, as honest and just as I. But to proceed.

See Page 491. Water is not frequently found in the Cavity of the Abdomen as in the Thorax.

It may be so; but if the Stomach, Guts, &c. in the former, and the Lungs in the latter, continue firm and found, (as is reported they were in Mr. Simpson) I cannot see how it should happen to be found in either. I must confess, I have never seen it, nor was there any thing like it in my late Experiment. If the Fibres are perished, I should not wonder at it; but if otherwise, I should be thankful to your microscopical Anatomist to show me how or which way it should enter.

As soon as the Lungs, Stomach, &c. are full of Water, the Body naturally sinks. Page 491.

I suppose the *Idem* includes the Thorax and Abdomen, as well as the Guts; but though the Lungs, Stomach, and the *Idem* are full of Water, in the Sense of Fulness here meant, I deny that the Body will always sink, as having been the contrary, and can bring Proof of the same.

Page 491. *It is observable (you say) that human Bodies after Death admit no Water, inasmuch as soon as Death falls a Man, the Spiritus Maje in all Parts do naturally contract themselves.*

How it is in human Bodies I cannot say, having made no Experiment of that Kind; but that it is always so in other Animals, I deny, and indeed can see no Reason why it should not be admitted for a parallel Case: For though you say, the *Spiritus Maje* do contract themselves, yet the *Epiglot* does open; so that unless the Tongue, and Palate, by their Constriction, or some other Cause, make already in the Windpipe, intercept the Passage, what Windings, as a superfluous Portion of the Body, but that some small Quantity of Water may slip within the *Rima*? But whether or not the *Spiritus* do always naturally contract themselves before Death, may be disputed; as they sometimes labour at that Time with such a *Paralysis*, as occasions a Relaxation of their nervous Fibres, and forces them involuntarily to let go their Contents: That nothing is more common than to dying Animals, whether rational or irrational (if soon before they did not exonerate) to let fall their Urine and satiate their *Feces*.

That I might inform myself whether the Water would get into a dead Body, I caulked a Dog to be suffocated over the Furnace of a spongyous Liqueur, prepared for Diffusion, in the Time of its Fermentation; and though his Neck was held some little Distance from the Surface, yet it sufficed him to Death in two or three Minutes Time; after this he was thrown into the Water, and sunk presently to the Bottom, where he lay several Hours. Being carefully taken out, I opened his Throat, and found the *Epiglot* (as is always usual) raised from the Windpipe, which

inclining downwards, there was discharged about three Spoonfuls of pale Water.

Page 491. The immediate floating of human Bodies, thrown dead into the Water, I believe to be very uncertain; and whoever goes about to establish it for an infallible Hypothesis, I must needs think very rash, if not guilty of a downright Folly: For, though your *Seamen* should tell me a thousand idle Stories, I know there are so many Causes that may alter the Case, that it would be very ridiculous to credit to hold an Assertion. I cannot say, I have as yet tried the Experiment on a human Body, but of their other Animals (both alive and dead when thrown into the Water) which I have made use of, there was but one which floated, and that I thought most likely to be found at the Bottom, as having received most Water into the Lungs and Stomach. If the dead Body of an animal Person should not sink, it might from Strangeness: On the other Hand, if that of a purely symmetrical should not float, it would be equally a Wonder.

Page 492. *If the Person died in the very Act of Inspiration, the Lungs (you say) will be full of Air, &c.*

Here, Sir, you must give me Leave to think you very much out of the Way, for unless in the Case of some very sudden and violent Death, I am apt to believe all Persons finish their Lives at the Act of Expiration, and even in the most sudden, leaving aside that of Strangling by a Ligateur, where the Air is forcibly included, and its Passage from the Windpipe intercepted, I make it a Question, whether the last Motion of the Lungs is not that of its Sympole or Contraction: For although to common Appearance, a Man in other Causes may be thought to be inspirating, and from perfectly dived of Sense and Motion, yet by laying any polished or diaphanous Body on the Mouth and Nostrils, there is often seen a Damp contracted on the face, which is nothing but the Air insensibly proceeding out of the Lungs, and considered on the Surface of the said Body.

'Tis the general Opinion that each given Rite to that very common Expression, when he would signify the Death of a Friend, by saying, *He expired*, or *halt expired* out his *Self*. But admit the Assertion good, of expiring in the Act of Inspiration, it will not follow that any dying Person can take a breath Part of the Air he did in perfect Health; and to consequently cannot fill his Lungs with Air: For, not to instance in all other Persons, who at all Times take but little Air, by reason of the Obstructions of the *Bronchia*; and are therefore forced upon quick Breathing; it is very unusual to believe, that immediately before Death the coarctive Fibres are much weakened, the Blood begins to stagnate in all Parts, and being carried by the *Arteries* only into the Lungs faster than drawn off by the *Pulmones* into the left Ventricle of the Heart, a great Part of the pulmonary Cells are so filled that they can admit but little Air: so that the Quantity of what we take in perfect Health, and that which we receive dying, is vastly disproportionate.

By filling the Thorax with the same Air forced into the Windpipe, unless you mean filling the Lungs in the Thorax, it seems as Kin to the Jargon of filling the Thorax with Water out of the Lungs. For my Part, I have fewer Times, through a Tube, blown with as great Force as I could into the Lobes of the Lungs, and caulked at the Gate time a lighted Candle to be held near their Extremities, and round about them; I never could perceive the least Motion of the Flame, whereby I might conjecture the Air had any Vent: So that I must think it impossible that either Air or Water, whilst dear *Tessie* continues firm, can insinuate itself into the Cavity of the Ventricle, still you can bring me some of the dissent *Wallius's* Gentlemen, that have Peers in the inviolable Membrane of their Lungs at big as the longer Sort of Peas.

Page 42. I think it very likely, that a dead Body will be more buoyant in salt than in fresh Water: But your Experiment I take to be inconclusive, for unless you had had that a Slip will sink some Inches lower in a Sea of fresh Water than in one of Salt, your *Adversary* may object, that the Reason of the lower sinking in the *Tissot*, may perhaps be as much owing to the Want of Depth, as Salt.

The Discrepancy of the Physicians is best perceived by reading over the Trial: Some Part of the Disagreement, as I remember, did consist in this, That whereas on the King's Part, it was affirmed, the Lungs of Mrs. Stone were firm and found, and the least Appearance of Water in the Thorax; for the Prosecutor, Mr. Cropper, it was replied, That in the inviolable Membrane of the Lungs was found, it was ridiculous to expect Water in the Chest, their Enclature.

Again, for the King, it was thought impossible that any Person thrown alive into the Water, should be drowned without swallowing or taking in a great Quantity of the same into the Stomach, and other Cavities; whereas, for the Prosecutor, it was thought very possible two or three Ounces might be sufficient to drown any submerged Person. And this leads me to a Passage in the last cited Page, where I find you much concerned, that Mr. Cropper's Physicians should strenuously urge, that so small a Quantity of Water was sufficient for this Purpose: Which you say they grounded on a private Experiment on a Dog half-hanged, you telling us to think that there were *Artifices* in the Case; and indeed to doubt it, if I were sure they had half-hanged him: But, Sir, you were told so in your Sleep, it may happen to be false; or not, I think you are but little obliged to any Person, who was so officious as to tell you an Untruth. However, that you may not be told of any Artifice made use of in my Experiments, I shall refer you to the affidavit Mr. Simpson: He is a Gentleman very curious in their Enquiries, a Man of unquestionable Probity, and very well known in our City of London.

In his Presence, with divers others, I caulked a Dog, who had been kept falling almost twenty Years, to be plunged under Water, without suffering him to rise: When he had been dead some Time, I took him with his Head erected, that we might not lose a Drop of Water he had taken in.

Having made a Ligature on the *Gale*, I turned down the *Larynx*, and with a moderate Pressure there was discharged of Water, mixed with a Sputum or Froth, about four large Spoonfuls.

After this I came to the Stomach, which I perceived to be very lax and flaccid, when cutting into it, there was not a Drop of Water to be

usually inferred: Dead Bodies thrown into Water, I am satisfied, will sink; and drowned Bodies sometimes will not. But as to the Case before us, in plan that some of those who viewed the Body gave a different Relation from some others. Thus some of them said the dead float, though it was under Water; whilst others, who should know best, being the Parish-Officers, and employed by the Coroner to take her out, deposed that the Body lay half a Foot under Water; and that, for any thing they could perceive, her feet might touch the Bottom; and farther, that when she was hauled up, there were several Sticks and Flags on which she rested: But without all this, Sir, I think it very natural for a dead Body, which is always buoyant in a Current four or five Feet deep, by the bare Force of the Stream, when it meets with a flaming Opposition, to be raised from the Bottom.

Page 494. Thirdly, *Because her Body was not at all fresh.*
Nor was it at all necessary, though drowned, that it should.

Fourthly, *Because the Water came out of her when lifted out of the Water,*

was judged from her efforts and the Water.
This, with Submission, is a Mistake: For the there is no Quantity of Water taken notice of as due from her, yet it is agreed on both Sides, that she did purge at the Mouth and Nostrils; some say more, others less. The two Principal, who took her out, and stood by for some time afterwards, do affirm, that the Froth came out after such a Manner as to run down the Sides of the Face, and that as it was wiped off, fresh Froth came profusely on again; which Dr. Grew does affirm could not have happened, had she been strangled, or otherwise killed, before. Whether this be so or not, I believe it very possible, when little Water is received (and very little will suffice to drown a Person), if there be no great a Purgation at the Mouth and Nostrils, most, if not all the Water may be turned into a fermenting Matter, as last is much, that there will be no absolute Necessity for Water to run out upon the Motion of the Body afterwards.

Fifthly, *Because her Limbs were not purged.*
After the Weeks Time I should indeed have expected Purification from the Pores under Ground, that had not been embalmed, without Regard to Water taken into the Body; which, whether or no it had been Purification, is very disputable: What it may do under the Earth, I know not; but I much question, whether dead Flesh, covered over with Water, will grow purged to such a degree as that which is exposed to the immediate Contact of the Air. On this I shall be able to say more in a little time, and for the present leave it as a Problem undecided.

Sixthly, *From the several different Setups of Blood, washed in drowned Persons.*

Upon the Trial, it is affirmed by Mr. Conda, that both Mr. Douglas and himself having viewed the Body, did give in as their Opinion to the Coroner, that there were no other Settlements or Stagnations of the Blood, than what may usually happen to drowned Bodies: Mr. Conda instances in the Child for one; but whether that were so or not, I am perceived myself on the Supposition of a drowned Body, nor do I for why it may not be found on the Neck and Breast, as soon as on other Parts.

Page 495. Seventhly, *From the unusual Disfigurement Mrs. Gurney was found in, both in Mind and Body, especially that she would not discover it, till she was almost frightened out of her Senses, by the Force, as she thought, of Mrs. Smart, who asked her Words, Douglas, several things.*

If Mrs. Gurney was disturbed in Mind, it would seem strange that she should not be disturbed in Body; the latter being, as I suppose, seldom or never easily withheld the former in under Trouble or Disfigurement. But whether Mrs. Gurney's mighty Disfigurement had other Rise than a Whim of the Brain, founded upon a strong Propensity of Fancy, may very reasonably be questioned: For my Part, I look on it as natural for a dejected, ignorant old Woman to be terrified with the Disfigure of her own Imagination, before-hand prevented by too deep Reflection, though the same has nothing but a Chimera to support it, that I am never startled when I hear of their Pretences to Visions and Revelations. These you know are not unfrequent, though more peculiar to a delirious Soul. So that if such such Persons happen to be first frightened that any thing may be so, they need not but afterwards, for a Confirmation that it is so.

Had you not already acquainted us with the Weakness of your last self, and your Incapacity, &c. I should have been startled that a Man of Learning and solid Judgment should build on the idle Fancies of a decrepit old Woman. I think, how greatly fewer he might be disturbed by the Brain, founded upon a strong Propensity of Fancy, may very reasonably be questioned: For my Part, I look on it as natural for a dejected, ignorant old Woman to be terrified with the Disfigure of her own Imagination, before-hand prevented by too deep Reflection, though the same has nothing but a Chimera to support it, that I am never startled when I hear of their Pretences to Visions and Revelations. These you know are not unfrequent, though more peculiar to a delirious Soul. So that if such such Persons happen to be first frightened that any thing may be so, they need not but afterwards, for a Confirmation that it is so.

Eightly, *From what is feared by the Gurneys against their Lawyers at the Trial.*

Could I believe all to be true that the Gurneys swore, I should make us Question of the Likelihood of these Men's Guilt: But that they did flinch in some things, is very easy to believe, by some Particulars at the Trial; and by their Behaviour before, at, and after the same, we have great Inducements to persuade us that they did so in others. Thus it is proved that Gurney himself went out of the Court in a boiling way, to sell some of his Acquaintance, that he had done Gurney's Business, or so that Effect. And at another time he said, that if Mr. Gurney had visited old Mrs. Smart, none of this Trouble had befallen him. Another thing discloses the Malice of the Prosecution, in that though themselves suspected Mrs. Smart's Mind, yet this was not to be taken Notice of, for fear of taking off her Evidence. And if her Wife could so readily turn the Fifty Shillings Mr. Mayne had into Fifty Pounds, furnished to be paid him for murdering Mr. Sarah Smart at Harford; the might by the same kind of improvement, or by a Mistake, undo all the rest.

It seems indeed to me the most notorious Absurdity that can be imagined, that had their Men really come down on such a Design, they should go directly to tell their Landlady, Mrs. Smart's Business was done; they had paid her counting Days, and that one of them had received Fifty Pounds for doing her Business.

In Matters of this Nature, where we can have nothing but idle Stories

and an Old Wife's Dream, to mislead the Suggestion, I am very highly behoves us, before we pass our Sentence, to pay just regard to the Character and Reputation of the Persons. Thus, indeed, there is no more impossible for Mr. Gurney to clear himself in the Opinion of every one, as he knows something of him, yet I am ready to think, there are some who know him, at all some particular Persons, that upon any Trial, would be ready to give evidence in his Favour: In that Case, will you not think, that it could be hazardous to leave his Hands in the Court, and to leave the Court to be persuaded by one thousand Pounds, to mislead the Suggestion, and to leave the other Persons, to decide they live a Crime, and to leave the other Characters well satisfied, and not one of them to be misled, to make an Affidavit for the Loss of Five hundred Pounds?

Page 495. Ninthly, *From the Sentiments of some of the Gentlemen, who were present at the Trial.*
I must needs think, that on so formal an Indictment, and on so great a Crime charged on them, such a Court must be very attentive, especially when Mrs. Gurney's Tale had been so long, and so full of Aggravation; I do not know, for publick Satisfaction, and for the sake of the Jury, as you call them, I wish you had named some of them who did believe her murdered after the Trial: I am assured that some of them have openly declared, they thought the Gentleman who speak of had been too much abused, that the Professor's Evidence, if it was not true, was at least too much in it, was little enough to make them Repentant.

As to the Letters produced in Court, your Testimony seems to say, that they are not of a desperate, but a furious Man. And why?

Is the Author of the Harford Letter not an extraordinary, or perhaps no Knowledge at all of her, but takes every thing on Trust from her Friends and Relations; he is not to be so positive, that the Style does so very fast her Character. It is by Style, as the World generally is understood, you mean the Order of her Thoughts, as the Manner of her Expression, you must own she might have Sense enough to be the Author of these Compositions. But I find you make too bold with the Utter of Words, and take them so differently from other learned Men, that in some Places it occasions a little Difficulty to understand you. If by Style then, as I imagine, you would signify the Subject of the Discourse, or the Matter of the Composition, I have more Reason to think, that I will at present make nothing of these Letters, do well enough for her Character: work from that know her. And I must tell you, that I am ready to believe, had her Mother been asked the Question some Months before she died, when she had some Words with her on her Evening at the Garden, or about the Time when Theophilus was first set to repose her, about her falling from the Light; I say, at these Times I can't think her Mother would have denied but that these Letters might have been written by her Character. However, she is now out of a Capacity to defend herself; and upon that Account it might seem ill with Contempt to tread upon her Affairs: I shall therefore say no more, but that I would not have you too busy with the Character, left you should happen to make good an old Proverb.

Page 496. The Mother shall affirm, the Letters shown in Court were of a foolish Character, than ever her Mother or Daughter was to write, neither did Mr. Smart show such a regard.

Would it not have been very odd, if the Mother and Brother, who came to secure the Reputation of so near a Relation (though never so well fortified that it was her Hand), should have said otherwise than they did? For my part, I take both their Answers to be so unsatisfactory, not to say foolish, that nothing but the Relation they were speaking for can plead their Excuse.

The Mother being asked by the Judge, whether she thought it was her Daughter's Hand? replies only, *How should I know? I know for now no fact, perhaps her Hand may be satisfied.* Being questioned again, what she would say to it if it had been written in a more sober Style? she answers, *I shall say as to her Hand, which I had first her own.*

The Brother being interrogated on the same Question, says, *That he is his Sister's Hand:* But being asked if he did believe it was her Hand? he replies, *No.* And why? *Because it does not suit her Character.* Now let the World judge, if this contains any more than if the Mother had said, *Because she was my Daughter, or the Brother, because she was my Sister, we won't believe it, left the World should look on her to have been a bad Woman.*

Page 497. Three were as Mr. Smart made of these Letters, all the Common Report of her being with Child (which had been industriously spread abroad by several, but by none more credulously than by a Naval Quaker, her former Admirer) was proved to be false, &c.

These Letters were taken notice of to furnish as the Report of her being with Child, it was very early, so that that Morning she was taken out of the Water, it was whispered in the Country, and at Night I heard from some in London, that they believed it very likely for her to be with Child; and that to prevent the ensuing Infamy her had made herself away. This was no more than what is generally suspected, when a single Gentlewoman is by any means accessory to her own Death. So that without Dispute, if the common Quaker had not been concerned in it, the Report would have spread without him. But I judge this Epithet is bestowed on him, not so much for that he thought and reported her to be with Child, which hundreds did besides him at that time, but because he was so very officious to prove her Hand in his Receipt.

This may indeed be thought a monstrous Indignation from him, as he had been her former Admirer. And I think if her Hand-writing could have been proved without his Appearance, he should have been shamed still. However, I would not have you to say any thing at him, since I don't find that he got any thing more by it, than that his Judge returned that he was one of their own Side. And as for this only he said he was a Naval Quaker, I could tell you of some that have had great Part to act in this Prosecution, that are as far from being such Quakers (it to be so is a Perfection) as Mr. Smart.

Page 498. Mr. Martin and Mr. Archer as the Trial passed, that Mr. Cooper deposed, that Mrs. Smart was a madly Frying, &c.

When

And yet at his Trial both he and his Witnesses pretended to know her to be melancholy as was near to a Delirium. And this Depth of Melancholy, he would impute as for love of him, and therefore the drowned herself.

Now what can be more contradictory, or more fully prove that which he speaks at his Trial to be false, than this which he himself did swear? And this was witnessed by two of the Counsel's Inquest, and several more would have done the same, if they had been suffered to speak; but, as the Trial relates, they were stopped.

Many Observations might be made, and Inferences given, to clear her Reputation, and to prove the Falseness of what was said upon her; as, in particular, her so earnestly loving a young Woman an Acquaintance of hers, who had kept her Company that Afternoon, and used to lie with her sometimes, to stay and be with her that Night her Death was; and her telling her, she could not well fly then, she engaged her to come and dine with her the next Day, and told her what was for Dinner, desiring her Company all Day after, the not intending to go from home; which she promised to do.

And it is very observable, from the Beginning of the Trial to the End, what Shifts and Devices he is forced to make use of to drift out the Time, that there might not be enough for the Witnesses on the other Side to be heard; and also his endeavouring to baffle the Evidence against him; as first, above twenty Involuntary Quells as he asked her Maid about Poison, which he brought to poison a mischievous Dog which haunted the House; and if he could not find a Means to confound and put her out, if he had not had Truth on her Side, and gladly would have picked something out of it, if he could have told what.

Also, the many impertinent Witnesses he calls to prove his Intention to lodge at Bedford's that Night her Death was, and sending for his Bag, &c. and folding his Things there; which is seems was not at all expected by them. For John Bedford's Wife said, upon her Oath, she believed Edward Gwyer did not intend to lodge at her House; but was surprised when he first to her, between Eleven and Twelve o'clock at Night, to get his Bag ready, and came before it was quite dark.

And the next Night after, when he was sent for by the Counsel's Inquest to give an Account where he left her, he said, in the Parlour where we sit. And being asked, if he did not hear her bid her Maid warm his Bed? He said, I thought he had meant her own Bed. But it is very unlikely that he would go to Bed and leave him sitting there, or that when he went out he should fly still, and not light him to the Door. But if it were as he says, that he left her in the Parlour, for a Man of his Education and Figure in the World to go away at that time of Night, when he knew there was a Fire in his Chamber, and his Bed was a warning, and let

himself out in the Dark, and say nothing, is not a little extraordinary, looks very darkly.

And then his sending for his Horse three times, to her Mother's House the Night after her Death, before he was examined by the Counsel's Inquest, and would have gone out of Town then, if he could have got him, as he confessed to the Lord Chief Justice Holt; but at the Trial he said, I sent for him, for fear the Lord of the Manor should come home.

Also, when it was taken notice of at his Trial, by the Counsel, that he never came after that Night her Death was, to give her Mother any Account where he left her, or so any wife to give her Satisfaction, so this he answered, It might be strange for me to come and visit a Woman that I never had the least Knowledge of: And yet he had several times lodged at her House when her Husband was living. And that Night also, that he was examined by the Counsel's Inquest, when she asked him, If he disowned her Daughter as he melancholy? He said, No; only he thought she was not to live in Discomfort at Dinner as sometimes he had from her; for most of the Discomfort was between her Mother and him. Surely he will be hard put to it to reconcile himself in this Discomfort.

And it is very remarkable, what great Diffimulation he manifested at that time, for in his Discomfort, he taking Occasion to speak of the People called Quakers, he expressed his great Love for them, and for their Principles, that if ever he changed his Religion, he said, it should be for them: Notwithstanding he denied them in much at his Trial, about their being by Education entitled to the Light within.

Thus, as first, upon the whole Matter, it may be concluded, That the Defence he had made for himself and his three Gentlemen, and the most material Things he made use of, whereby they got off, and were acquitted, were proved false out of his own Mouth before he went out of the Court; as it may be seen in the Trial, where the Counsel for the King says thus:

"My Lord, we insist upon it, that this is a different Evidence from what Mr. Gwyer gave to the Counsel's Inquest; for then he said, he knew none she was in love with, nor any Cause why she should do such an extravagant Action as to drown herself: But now he would make the whole scheme of Things turn upon a Love-Fit." And then he moved the Court to give Leave to call several Persons of Quality and good Reputation, who were there present, to speak to her Reputation, in Contradiction to the Letters produced; declaring, that he believed the whole Town would do the same. The Judge said, they would grant that; and did not question it. So there was leave permitted to say any thing to that Purpose.

NUMBER XXXIV.

A STATE of the PROCEEDINGS in the House of Commons, with Relation to the Impeached Lords: And what happened thereupon between the Two Houses (a).

Refused.

Sabbath, 15 die Februarii, 1700.

THAT an Humble Address be presented to His Majesty, That he will be pleased to order all the Treaties that have been made between His Majesty and any other Prince or State since the late War, to be laid before this House.

Ordered, That the said Address be presented to his Majesty, by such Members of this House as are of his Majesty's most Honourable Privy-Council.

Martin, 18 die Februarii, 1700.

Mr. Secretary Parns acquainted the House, That their Address having been presented to his Majesty, That he would be pleased to order all the Treaties that have been made between his Majesty and any other Prince or State since the late War to be laid before this House; his Majesty had been pleased to give Order, That they should be copied, and that they either the Originals or Copies, as the House pleased, should be laid before them.

Martin, 4 die Martii, 1700.

Mr. Secretary Parns presented to the House Copies of several Treaties, and Translations thereof.

And the Schedule or List of them was read, and is as follows: viz.

1. A Copy of the French King's Ratification of the Treaty of Partition.
2. The Translation of the same.
3. A Copy of the Ratification of the Separate Article.
4. The Translation of the same.
5. A Copy of the Ratification of the Secret Article.
6. A Translation of the same.
7. A Copy of the French King's Declaration upon the Treaty of Partition.
8. A Translation of the same.

Ordered, That all the Proceedings which relate to the Impeachment, and what happened thereupon between the House of Lords and House of Commons, be examined by the Journals, and printed.

In Vol. V. p. 136. are inserted, Proceedings in Parliament against William, Earl of Portland, John Lord Somers, Edward Earl of Oxford, and Charles Lord Halifax, who were impeached at the High Court and Chancery, on an oath against John Lord Mordaunt, for Words spoken at a Conference between the Lords and Commons, 1701. With this it is observable that those are the Proceedings as published by the Order of the House of Lords only: These have selected are what were published by Order of the House of Commons; which are printed in Vol. V. but for what Reason no one can tell, when Partiality: For as the Commons were the Prosecutors first their Evidence, and the Commons they were upon, ought not to have been omitted.

House,

Houses, from Time to Time, with the State and Progress of those Negotiations, into which His Majesty has entered, pursuant to the Address of this House:

And also to lay before His Majesty the all Consequences of the Treaty of Partition (passed under the Great Seal of England during the Sitting of Parliament, and without the Advice of the same) to this Kingdom, and the Peace of Europe, whereby such large Territories of the King of Spain's Dominions were to be ceded up to the French King.

Ordered, That a Committee be appointed to draw up the said Address. (And a Committee was appointed accordingly.)

See Editor's Speech reported from the Committee, to whom it was referred to draw up an humble Address to be presented to His Majesty, that they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and with an Amendment agreed upon by the House, and is as followeth, viz.

Most Gracious Sovereign,

“*Whereas nothing can more conduce to the Safety and Honour of your Majesty and this Nation, than taking the Advice of your English Councils, we your Majesty's most dutiful and loyal Subjects, the Commons in this Parliament assembled, do, with all Humility, return your Majesty our hearty Thanks for your Gracious Message, wherein you are pleased to communicate your Royal Intentions to acquaint this House with the State and Progress of those Negotiations into which your Majesty was entered, pursuant to the Address of this House; which Method had your Majesty been advised to take before the Treaty of Partition was perfected (which was passed under the Great Seal of England, during the Sitting of Parliament, and without the Advice of the same), we had been prevented from laying before your Majesty what we are now bound on Duty (though with Grief) to do, the ill Consequences of that Treaty to this Kingdom, and the Peace of Europe, which is directly tending to increase the Power and Greatness of France, by delivering up to the French King such large Territories of the King of Spain's Dominions, and so the Destruction of the Trade of this Kingdom, to which Treaty may justly be ascribed the Danger which now threatens both this Kingdom and the Peace of Europe.”*

Resolved, That the said Address be presented to his Majesty by the whole House.

Ordered, That such Members of this House as are of his Majesty's most honourable Privy Council, do humbly know his Majesty's Pleasure when he will be attended by this House.

Ordered, That it be an Instruction to the Committee of the whole House, who are upon Tuesday next to take into Consideration the State of the Nation, That they do take into further Consideration the Treaty of Partition.

Ordered, That a Committee be appointed to search the Journals of the House of Lords, what Proceedings are therein, with relation to the Treaty of Partition, and report the same to the House. (And a Committee was appointed accordingly.)

Advised, 26 die Martii, 1701.

Sir Edward Seymour reported from the Committee appointed to search the Journals of the House of Lords, what Proceedings are therein with relation to the Treaty of Partition, and report the same to the House, That they had searched the Journals of the House of Lords accordingly, and take Copies thereof, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same were read, and are as followeth, viz.

(A Copy of the Lords' Journal.)

June, 10 die Martii, 1700.

The House being moved, That a Day may be appointed for taking into Consideration the Treaties now lying before this House, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Treaties shall be taken into Consideration on Wednesday next at eleven o'clock in the Forenoon.

Advised, 21 die Martii, 1700.

The Order being read not making into Consideration the Treaties now lying before this House, the several Translations of Treaties were read, as followeth, viz.

1. The Treaty of Defensive Alliance between England and Holland, 1677-8.

2. The Renewal of the Treaties between England and the States-General of the United Provinces, Aug 17, 1695.

3. The Renewal of the Treaty of Alliance between England and Holland, Aug 24, 1696.

4. Ratification of the Treaty of Ryswick.

5. Convention between England, Sweden, and Holland, Aug 11, 1698.

6. Treaty between England, Savoy, and States-General, in January 1700.

7. Separate Articles between England, Sweden, and Holland.

8. Ratification of the Treaty, January 11, 1700.

9. The Ratification of the Separate Articles.

10. The Ratification of the 5th and 6th articles.

11. The King's Declaration.

12. The Dauphin's Declaration.

After which the House came to this Agreement, That the Lord Chamberlain do humbly move his Majesty, That all Minutes or Papers any way relating to the Negotiations of the Treaties be laid before this House.

Advised, 14 die Martii, 1700.

The Order being read for taking into further Consideration the Treaties: The House was acquainted, That Mr. Ford attended with the Papers, as agreed on Yesterday; he was called in, and delivered the Papers following at the Table, and then withdrew.

1. Copy of the King's Warrant for advancing the Treaty to the full Powers.

2. A Copy of the Ratification of Partition.

3. A Copy of the King's Ratification of the Separate and Secret Articles.

4. A Copy of the King's Warrant for affixing the Great Seal to the Treaty of Partition, Separate and Secret Articles.

(These Papers were all read by the Clerk.)

Lords Commissioners appointed to draw up and send the Faith as to the Treaty now in Debate, and all Things and Circumstances relating to the same, and to draw an Address to be presented to his Majesty thereupon, and report to the House.

Dux Dives Dean. Secre-	Com. Nottingham,	Dom. B th rine,
64d	Com. Rochester,	Dom. A. B th ,
Dux Balow,	Com. Abingdon,	Dom. C. G. G.
Dux Lond,	Com. M th borough,	Dom. L. G. G.
March, Newcastle,	Com. Oxford,	Dom. B. G. G.
Com. Pembroke,	Vile. Wyndham,	Dom. G. G. G.
Com. Bedford,	Vile. Ligonier,	Dom. G. G. G.
Com. Thurst,	Dom. W. G. G.	Dom. G. G. G.
Com. King's,	Dom. L. G. G.	Dom. G. G. G.
Com. R. G. G.	Dom. L. G. G.	Dom. G. G. G.
Com. Thurst,	Dom. F. G. G.	Dom. G. G. G.

The 6 Lordships, on the 5th of them, to meet To-morrow at eleven of the Clock, in the Prince's Lodgings, near the House of Peers, and to adjourn as they please.

Sabbath, 15 die Martii.

The Earl of Nottingham came from the Lords Commissioners appointed to draw up, and state the Faith, as to the Treaty now in Debate, That the Commission had met, and thought it proper to lay down such Facts as appeared to them, viz.

1. That by the Treaty of Partition, Naples, Sicily, &c. were to be given to the Dauphin.

2. That the Emperor was not a Party to this Treaty, though principally concerned.

3. That on the 11th of the States-General met with the Plenipotentiaries of England and France, as were required by the Powers, at the making the Treaty in Lens.

4. That there were no Instructions in Writing to our Plenipotentiaries, though the Powers were all signed, and that if there were no such Orders given, yet it appears not as they were considered in any Council.

5. That the Treaty, when perfected, was not considered as any Treaty concluded before it was ratified.

6. That it appears, That the Warrant for Ratification was countersigned by one of the Plenipotentiaries.

7. That the Treaty was translated and signed, and the Great Seal affixed to it during the Sitting of a Parliament.

Then the House, upon Consideration of all of the full Head in the said Report, agreed to the same, with the Alterations following, viz.

Instead of *(given up)* put the Words of.

Then the second Head was read.

After Debate thereupon.

The Question was put, Whether this Paragraph shall stand?

It was refused in the Negative.

Deponitur.

First, Because it is manifest by the Treaty itself, that the Matter of Fact is true.

Secondly, Because the Reporter, as we conceive, had been the most proper to have been treated with on this Occasion, for 'twas more prudent and late to have treated with the Emperor to have submitted the Pretensions of France, than with France to lessen the Dominions of the House of Austria, which in its full Strength, and in Conjunction with the most considerable Powers in Europe, and with the Expense of more than Sixty Millions Sterling to our Share, was scarce able to withstand the Arms of France.

Thirdly, But admitting that the Emperor was not the most proper to be treated with; yet to prevent the Undeign which might be taken by uniting too many Dominions under one Prince, especially such a Prince as without any Additions was formidable to all Europe, of all others the Emperor was the most improper to be left out of such a Treaty, for he was most concerned in it; and our Ministers could not, or at least did not, sufficiently support his Interests, or the just Balance of Europe: But, on the contrary, as we are informed by one Lord who signed this Treaty, it was concluded against the express Desire of the Emperor.

De Legatione.

First, Because the Truth of this Proposition is Reason enough for its being fit, and it will certainly be of fatal Consequence, if admitted, without any Direction by Instructions in Writing, shall presume to act contrary to the very Commission that empowers them: And, in this Case, the Alliance of the Dutch Ministers was the more necessary, because the Emperor was no Party to this Treaty, and the States-General are more immediately concerned than we are to promote his Interests.

Secondly, But if this Treaty was concluded with the Dutch Ministers in 1698, before his Majesty's Return into England, was alluded by one of the Lords who signed it afterwards in London, was alluded by one of the Powers was not granted by his Majesty till the second of January following.

As they acted without Power, so without Instructions too in Writing, which never was practised in any former Transaction abroad.

Lastly, We conceive, that neither of the foregoing Facts ought in Reason, or according to the strictest of Parliaments, to be ordered to be inserted.

Persons, by Letters, of which we have not had a full Account, we think it may be very useful to the Publick to communicate this Address to the Commons, who have better Opportunity than we have had of enquiring into this Matter, which seems to be yet in the Dark, and which their own Member may help to explain to them.

<i>Leeds,</i>	<i>Kent,</i>	<i>Conventry,</i>
<i>Newcastle,</i>	<i>H. Lincoln,</i>	<i>Wymouth,</i>
<i>Birmingham,</i>	<i>Buck,</i>	<i>Wigan,</i>
<i>Gloucester,</i>	<i>Arundel,</i>	<i>Leicester,</i>
<i>Coventry,</i>	<i>Cardiff,</i>	<i>N. Devon,</i>
<i>Thames,</i>	<i>Wiltshire,</i>	<i>T. Devon,</i>
	<i>Scarshill,</i>	<i>Penryn,</i>

Ordered, That the whole House do attend His Majesty with the Address.
Ordered, By the Lords Spiritual and Temporal in Parliament assembled, That the Lords with white Staves do attend His Majesty, humbly to know what Time His Majesty will be pleased to appoint for this House to attend him with the Address.

Martin, 25 die Martii.
The Lord-Keeper reported His Majesty's Answer to the said Address.
My LORDS,

"I have taken Care, that all Treaties I make shall be for the Honour and Safety of England."

Ordered, That the foregoing Report of the Lords Journal do lie upon the Table to be perused by the Members.

Sabbath, 29 die Martii, 1701.
The Order of the Day being read for the House to resolve itself into a Committee of the whole House, to consider of the Sense of the Nation, and of the Treaty of Partition;

Ordered, That the Treaty of Partition, and the Report from the Committee appointed to inspect the Journals of the House of Lords what Proceedings were therein relating to the Treaty of Partition, be presented to the Consideration of the said Committee of the whole House.

Then the House resolved itself into the said Committee, and after some Time spent therein, Mr. Speaker returned to the Chair, Col. Granville reported from the said Committee, That they had come to a Resolution, which they had desired him to report when the House will please to receive the same.

Ordered, That the Report be made upon Tuesday Morning next.

Martin, 1 die Aprilis, 1701.
Colonel Granville (according to Order) reported from the Committee of the whole House, to which it was referred to consider of the Sense of the Nation, and of the Treaty of Partition, the Resolution, which they had directed him to report to the House, which he read as his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and agreed unto by the House, and is as followeth, viz.

Resolved, That William Earl of Portland, by negotiating and concluding the Treaty of Partition (which was destructive to the Trade of this Kingdom, and dangerous to the Peace of Europe) is guilty of an High Crime and Misdemeanour.

Resolved, That William Earl of Portland be impeached of High Crimes and Misdemeanours.

Ordered, That Sir John Lovell Gower do go up to the Lords, and at their Bar, in the Name of the House of Commons, and of all the Commons of England, impeach William Earl of Portland of High Crimes and Misdemeanours, and acquaint them, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

Ordered, That a Committee be appointed to draw up Articles of Impeachment against William Earl of Portland.

(And a Committee was accordingly appointed).
And Sir John Lovell Gower went up to the Lords with the said Impeachment.

So Sir John Lovell Gower reported, That he had been at the Lords (according to Order) and at their Bar had impeached William Earl of Portland of High Crimes and Misdemeanours, and acquainted them, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

Resolved, That a Conference be desired with the Lords, upon Matters relating to the Treaty of Partition.

Ordered, That Mr. St. John do go to the Lords, and desire the said Conference.

Mr. St. John reported, That he having (according to Order) been at the Lords to desire a Conference, the Lords do agree to a Conference accordingly To-morrow at One o'Clock, in the Painted Chamber.

Ordered, That the Committee who are appointed to draw up the Articles of Impeachment, do manage the said Conference.

Martin, 2 die Aprilis, 1701.
Ordered, That the Managers appointed for the Conference with the Lords, do withdraw into the Speaker's Chamber, and draw up what is to be offered at the said Conference.

Colonel Granville reported, That the Managers appointed to withdraw into the Speaker's Chamber, and draw up what is to be offered at the Conference with the Lords, had drawn up the same accordingly, and directed him to report the same to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and agreed unto by the House, and is as followeth, viz.

"I T appearing by your Lordships Journals, That your Lordships have received Information of some Transactions between the Earl of Portland and Mr. Secretary Parnley, relating to the Partition of Spanish Monarchy, the Commons having the said Matter under their Consideration, desire your Lordships will be pleased to communicate to the Commons what Informations your Lordships have had of any Transactions relating to any Negotiations or Treaties of Partition of the Spanish Monarchy by Letters, or otherwise: And the Commons are fully assured, That your Lordships will readily concur in assisting them in this Inquiry, which they conceive absolutely necessary for the Vow, VIII.

"the Safety and Honour of this Kingdom, and the Preservation of the Peace of Europe."

Then the Managers went to the Conference, and being returned, Colonel Granville reported, That they had attended the Conference, and offered what the House had directed.

Martin, 8 die Aprilis, 1701.

Resolved, That an humble Address be presented to his Majesty, That he will please to give Order, That the Grand Alliance of One thousand five hundred eighty-nine, with the two Secret Articles, may be laid before this House.

Resolved, That an humble Address be presented to His Majesty, That he will please to give Order, That the Treaty made in the Year One thousand five hundred ninety-eight, with relation to the Electoral Prince of Bavaria's having Part of the Territories of the Crown of Spain, may be laid before this House.

Resolved, That an humble Address be presented to his Majesty, That he will please to give Order, That the Powers and Instructions for making the late Treaties may be laid before this House.

Ordered, That the said Addresses be presented to His Majesty by such Members of this House as are of His Majesty's most Honourable Privy-Council.

Martin, 9 die Aprilis, 1701.

Mr. Secretary Parnley acquainted the House, That their Address having been presented to His Majesty, That His Majesty would be pleased to give Order, that the Grand Alliance of One thousand five hundred eighty-nine, and the Treaty of One thousand five hundred ninety-eight, and also the Powers and Instructions for making the late Treaties, might be laid before this House, His Majesty had been pleased to give Order for the Treasures and Powers to be laid before this House; but that there were no Instructions for either of those Treaties in Writing.

A Message from the Lords by Sir Richard Holford, and Sir. Pitt.

Mr. Speaker,
The Lords do desire a Conference with this House To-morrow at One o'Clock in the Painted Chamber, upon the Subject-Matter of the said Conference."

To which the House agreed: And the Messengers were called in, and Mr. Speaker acquainted them therewith.

Paris, 10 die Aprilis, 1701.

Ordered, That the Members who managed the said Conference with the Lords, do manage the Conference this Day.

And the Managers went to the Conference, and being returned, Colonel Granville reported, That the Managers appointed had attended the Conference; That, on the Part of the Lords, the Lord Marquis of Norfolke managed the Conference, and acquainted them, That the Lords had agreed to be laid before this House Two Powers, and also a Paper, which (although not signed by the Earl of Portland) yet was laid before the Lords by him, and that there being some Questions asked him by the Lords, there were his Answers also, which Powers and Paper Colonel Granville read in his Place, and afterwards delivered in at the Clerk's Table, where the same were read, and are as follow, viz.

GULIELMUS R.
GULIELMUS Tertius Dei Gratia Magnus Britanniae, Franciae, & Hiberniae Rex, Fidei Defensor, &c. Omnibus ad quos praesentes Litterae pervenerint Salutem. Quia ad conservandam unitatem Europae Quam gloriam conferre arbitramur, ac de efficacissima Meis quibus integritate Regis Benedicti confidimus ac conservari possint fideles & opportuni providendae, nos, aliam Publicae Tranquillitatis, immutandae periculum evidentius imminere, quam si evocet at Rex Catholicus, nullum Sobolem superfluum relinquens, monuit, (illius vero Regem dum superius exoptamus) ac prout Principes, Nam Successorem non solum quae vires videretur, evolvendum Bellum per tot formosa Regna, Provincias, Ditiones, exultant; quibus; Nobis spes maxime elucet, hac Bella avari polle, atque, omnia amice & felicitate componi, si de casibus; Reribus & Commodis in medium provide consulatur: Quia Nobis videtur; amicitiae, benevolentiae Principum & Dominum Dignum Ludovicum Decimum Quartum, Regem Christianissimum, ac Praepositos Dominos Dominos Ordines Generales Federatarum Belgii Praefatarum, in eadem, proferre Animo esse. Statim igitur, Quod Nos hic praesentia in Rebus praesentibus adeo periculis & perquam dilecti Consequatur & Confidimus nobis Gulielmum Comitem Palatinum, Vicecomitem de Cincelster, Baronem de Woodstock, Ordinem Nobis Praefatarum Equitum, necnon periculis & perquam dilecti Consequatur & Confidimus Nobis Edwardo Comite Jersey, unius Praefatarum Secretariorum Nostri Status; plurimum cordis, totidem secutus, ordinamus & deputamus, ac per Praefatos Comites, ordinamus & deputamus viros & subditos Commisarios & Praepositos Nostros, dantes & concedentes illis aut eorum alteri plenas & omnimodas Potestates; auctoritates, potestates & Mandata generale & speciale, ut pro Nobis & Nostro Nomine, cum praefato Comite Regni Christianissimum, ac Dominum Ordinem Generalem Federatarum Belgii Praefatarum Commisario ac Praeposito, five Commisario ac Praeposito de & super Praefatis conveniant, colloquantur & tractent, utque omnia periculis & conclusionibus, quae ad Bella de Successione Hispanica contende, habiles, Europae Pacem omnia melius modo faciant & conservent; Promittentes bona fide & in Verbo Regni, Nos omnia & singula & ac & Commisario ac Praeposito Nostro, necnon eorum alios, in Praefatis conculca faciant, ratas & firma habere, nec contra eorum aliquod contraveniant, sed eadem fide & inviolabiliter observant. Id quatenus terminum mensem Fidem ac Robur, hactenus Litteras Nostros Regis signatas, Magni Nostrae Equitum Signis muniri fecimus: Quae exhibant in Palatio Nostro apud Kensington De decimo Mensis Januarii, Anno Domini 1701: Regni; Nostri Undecima.

X x x
GULIELMUS

Resolved, That an Address be drawn up upon the said Resolutions, and upon the Debate of the House, to be presented to his Majesty.

Ordered, That it be referred to the Committee (who are to draw up the Articles of Impeachment) to draw up the said Address.

Resolved, That the said Address be presented to his Majesty by the whole House.

Mr. Bagen reported, That he and *Mr. How* had (according to Order) translated the Letter from his Majesty to the Lord Somers, and he delivered the same in at the Clerk's Table, where the said Translation was read.

Ordered, That the said Letter and Translation be referred to the Consideration of the said Committee.

Monsieur, 16 de Avril, 1701.

Mr. Bramley reported from the Committee, to whom it was referred to draw up an Address upon the Resolutions Yesterday, and upon the Debate of the House to be presented to his Majesty. That they had drawn up an Address accordingly, which they had directed him to report to the House, which he read in his Place, and afterwards delivered it at the Clerk's Table, where the same was read, and (with an Amendment) agreed unto by the said House, and is as follows; viz.

The humble Address of the House of Commons to the KING.

Most Gracious Sovereign,

WHERE Your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, do humbly crave Leave to re-
 peal to Your Majesty the great Satisfaction we have from our late
 Equity concerning the Treaty of Partition made in the Year One
 thousand six hundred sixty-eight (in which the Treaty in One thou-
 sand six hundred ninety-nine was dissolved), to be Your Majesty's
 great Care of Your People and the Nation, in not entering into that
 Negotiation without the Advice of Your English Councils. And
 finding that *John Lord Somers* (on whose Judgment Your Majesty did
 chiefly rely in that so important Affair) did, in Concert with *Ed-
 ward Earl of Oxford*, and *Charles Lord Halifax*, advise Your Majesty
 to enter into that Treaty of dangerous Consequence to the Trade and
 Welfare of this Nation, and who, to avoid the Censure which might
 justly be apprehended to fall on those who advised the same, endeavoured
 to seduce, That *Y^r Majesty*, without the Advice of Your
 Council, entered into that Treaty, and under Your Sacred Name to
 seek Protection for what themselves had so advised; of which Treat-
 ment of Your Majesty we cannot but have a just Reformation. And
 that they may be no longer able to deceive Your Majesty, and abuse
 your People, we do humbly beseech Your Majesty, That you will be
 pleased to remove *John Lord Somers*, *Edward Earl of Oxford*, and
Charles Lord Halifax, from your Council and Privilege for ever; as
 also *William Earl of Portland*, who manifested such Treachery, as un-
 just in their own Nature, and so fatal to their Consequences to this
 Nation, and the Peace of Europe. And we humbly crave Leave,
 upon this Occasion, to repeat our Assurances to *Y^r Majesty*, That
 we will always stand by and support Your Majesty to the utmost of our
 Power, against all Your Enemies both at home and abroad.

Ordered, That such Members of this House as are of his Majesty's most Honourable Privy-Council, do humbly know his Majesty's Pleasure, when he will be attended by this House.

Monsieur, 23 de Avril, 1701.

Mr. Secretarie Had acquainted the House, That his Majesty had been pleased to appoint to be attended by this House this Afternoon at Five o'Clock at Kensington.

Jeudi, 24 de Avril, 1701.

Mr. Speaker reported, That he with the House did Yesterday present to his Majesty their humble Address; and that his Majesty was pleased to give a most Gracious Answer thereto as follows: viz.

Gentlemen,

I AM willing to take all Occasions of thanking you very heartily
 for the Assurances you have frequently given Me, and now repeat
 of standing by and supporting Me against all Our Enemies, both at
 home and abroad, towards which nothing, in My Opinion, can con-
 tribute so much, as a good Correspondence between Me and My Peo-
 ple; and therefore you may depend upon it, that I will employ none as
 My Servants, but such as shall be found to be most likely to improve that
 mutual Trust and Confidence between Us, which is so necessary in
 such Conjuncture, both for our own Security, and the Defence and
 Preservation of Our Allies.

Resolved, *News* covered over.

That the humble Thanks of this House be given to his Majesty, for his Majesty's said Gracious Answer to the said Address.

Ordered, That such Members of this House as are of his Majesty's most Honourable Privy-Council, do to his Majesty the said humble Thanks at this House.

Mardi, 29 de Avril, 1701.

Mr. Secretarie Had reported to the House, That their Thanks for his Majesty's said Gracious Answer to the said Address had been presented to his Majesty, and that his Majesty received them very graciously.

Lundi, 5 de Mai, 1701.

A Message from the Lords by *Sir Robert Legard* and *Sir Richard Holford*.
Mr. Speaker,

The Lords have ever since we acquainted this House, That they
 having on the fifth Day of April last, this House having first up to their
 Lordships an Impeachment against *William Earl of Portland*, for High
 Crimes and Misdemeanours; and having also on the fifteenth Day of the
 same Month severally impeached *John Lord Somers*, and *Charles Lord
 Halifax*, of High Crimes and Misdemeanours: their Lordships in like
 themselves did send to put this House in mind, That as yet no particu-
 lar Articles have been exhibited against the said Lords, which, after
 impeachments have been so long depending, is due in Justice to the Pri-
 vity concerned, and agreeable to the Methods of Parliament in such
 Cases.

Resolved, That an Answer be returned to the Lords, That the Art (as
 against *William Earl of Portland*, *John Lord Somers*, and *Charles Lord
 Halifax*) are preparing, and in a short time this House will find them up
 to the House of Lords.

Resolved, That the said Answer be returned to the Lords, That the Art (as
 against *William Earl of Portland*, *John Lord Somers*, and *Charles Lord
 Halifax*) are preparing, and in a short time this House will find them up
 to the House of Lords.

And the Messengers were called in again, and *Mr. Speaker* acquainted
 them therewith.

Monsieur, 7 de Mai, 1701.

Sir Bartholomew Shower (according to Order) reported, from the Committee
 appointed to draw up the Articles of Impeachment against the Lords im-
 peached, That they had drawn up Articles of Impeachment accordingly
 against the Earl of Oxford.

Ordered, That the said Articles be reported To-morrow Morning.

Jeudi, 8 de Mai, 1701.

Sir Bartholomew Shower (according to Order) reported, from the Commit-
 tee to whom it was referred to draw up Articles of Impeachment against
 the Lords impeached, the Articles of Impeachment against *Edward Earl
 of Oxford*, which he read in his Place, and afterwards delivered in at the
 Clerk's Table, where the same were once read.

Resolved, That the said Articles be read a second time, Article by Ar-
 ticle: And the same were severally read a second time, and a in the
 Question severally put thereupon, agreed unto by the House to be the
 Articles of Impeachment against the Earl of Oxford: And are as follow
 518.

*Articles exhibited by the Exchequer, Citizens and Burgesses in Parliament as-
 sembled, in the Name of themselves, and of all the Commons of England,
 against Edward Earl of Oxford, in maintenance of their ancient charter
 against him for High Crimes and Misdemeanours.*

[These Articles being printed on the Proceedings of the Lords, Vol. V.
 P. 340 to 344, are not here inserted.]

Ordered, That the said Articles of Impeachment be expressed.

Resolved, That such Witnesses as are necessary to be made use of in
 relation to the said Impeachment, have the Protection of this House dur-
 ing their Attendance upon that Service.

Vendredi, 9 de Mai, 1701.

The engrossed Articles of Impeachment against *Edward Earl of Ox-
 ford* were read.

Ordered, That the said Articles of Impeachment be carried up to the
 Lords.

Ordered, That Colonel *Spely* do carry the said Articles of Impeach-
 ment to the Lords; and that he do also demand, That the Earl of Ox-
 ford do give sufficient Security to abide the Judgment of the House of
 Lords.

Colonel *Spely* reported, That he had (according to Order) carried up
 to the Lords the Articles of Impeachment against the Earl of Oxford,
 and had demanded, That the said Earl do give sufficient Security to abide
 the Judgment of the House of Lords.

Mardi, 12 de Mai, 1701.

Resolved, That a further humble Address be presented to his Majesty,
 That he will be graciously pleased effectually to enforce the Address of
 this House, for removing *John Lord Somers*, *Edward Earl of Oxford*,
Charles Lord Halifax, and *William Earl of Portland*, from his Council
 and Privilege for ever.

Ordered, That the said Address be presented to his Majesty, by such
 Members of this House as are of his Majesty's most Honourable Privy-
 Council.

Jeudi, 15 de Mai, 1701.

A Message from the Lords by *Sir Richard Holford* and *Mr. Pitt*.

Mr. Speaker, We are commanded by the Lords to deliver to this House
 the Answer of *Edward Earl of Oxford*, to the Articles exhibited against
 him by the Knights, Citizens, and Burgesses in Parliament assembled,
 in the Name of themselves, and of all the Commons of England, in
 maintenance of their Impeachment against the said Earl for High Crimes
 and Misdemeanours, supposed to be committed by him: And they deliv-
 ered the same accordingly.

Ordered, That the said Answer be read To-morrow Morning.

A Message from the Lords by *Sir Richard Holford* and *Mr. Pitt*.

Mr. Speaker, The Lords have commanded us to acquaint this House,
 That on the fifth Day of April last, this House having first up to their
 Lordships an Impeachment against *William Earl of Portland*, for High
 Crimes and Misdemeanours; and having also on the fifteenth Day of the
 same Month severally impeached *John Lord Somers*, and *Charles Lord
 Halifax*, of High Crimes and Misdemeanours: their Lordships in like
 themselves did send to put this House in mind, That as yet no particu-
 lar Articles have been exhibited against the said Lords, which, after
 impeachments have been so long depending, is due in Justice to the Pri-
 vity concerned, and agreeable to the Methods of Parliament in such
 Cases.

Resolved, That an Answer be returned to the Lords, That the Art (as
 against *William Earl of Portland*, *John Lord Somers*, and *Charles Lord
 Halifax*) are preparing, and in a short time this House will find them up
 to the House of Lords.

And the Messengers were called in again, and *Mr. Speaker* acquainted
 them therewith.

Vendredi, 16 de Mai, 1701.

The Answer of *Edward Earl of Oxford*, to the Articles of Impeach-
 ment against him was (according to Order) read, and is as follows, viz.

The Answer of Edward Earl of Oxford, to the Articles exhibited against him by the Knights, Citizens, and Burghs in Parliament assembled, in the Name of themselves, and of all the Commons of England, in maintenance of their Impugnment against the said Earl for High Crimes and Misdemeanours, supposed to be committed by him.

[This Answer being in the *Lords Proceedings*, Vol. V. Page 340—344, is here omitted.]

Ordered, That the said Answer be referred to the Committee appointed to draw up the Articles of Impeachment.

Ordered, That the said Committee do prepare a Replication to the said Answer, and that the said Committee do sit *die de die* in due time.

Mr. Harcourt reported from the Committee appointed to draw up Articles of Impeachment, That they had drawn up Articles accordingly against John Lord Somers, Baron of Epsom, in maintenance of the Impeachment against him for High Crimes and Misdemeanours: And he read the same at his Place, and afterwards delivered them in at the Clerk's Table, where they were read, Article by Article; and upon the Question severally put thereupon, agreed unto by the House to be Articles of Impeachment of high Crimes and Misdemeanours against the said Lord Somers; and are as follow: viz.

Articles exhibited by the Knights, Citizens, and Burghs in Parliament assembled, in the Name of themselves, and of all the Commons of England, against John Lord Somers, Baron of Epsom, in maintenance of their Impugnment against him for high Crimes and Misdemeanours.

[These Articles being in the *Lords Proceedings*, Vol. V. Page 345 to 356, are here omitted.]

Lance, 19 die Maii, 1701.

The engrossed Articles of Impeachment against John Lord Somers were read, and some Amendments were made by the House to one of them.

Ordered, That Mr. Harcourt do carry the said Articles up to the Lords.

Ordered, That Mr. Harcourt do also pray and demand, That the said John Lord Somers do give sufficient Security to abide the Judgment of the House of Lords.

Mr. Harcourt reported, That he had (according to Order) carried up to the Lords the Articles of Impeachment against John Lord Somers, and prayed and demanded that the said John Lord Somers do give sufficient Security to abide the Judgment of the House of Lords thereupon.

Mercurii, 21 die Maii, 1701.

A Message from the Lords by Sir Robert Legard and Mr. Gery. *Ad. Speaker*. The Lords command us to acquaint this House, That their Lordships having been defied by the Earl of Oxford, that a Day may be appointed for his speedy Trial, their Lordships finding no Issue joined by Replication of this House, think fit to give Notice thereof to this House.

They also command us to acquaint this House, That they having on the fifth Day of April last sent up their Lordships an Impeachment against William Earl of Portland, for High Crimes and Misdemeanours, and having also on the sixteenth Day of the same Month impeached Charles Lord Halifax for High Crimes and Misdemeanours; and these being as yet so particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof, which, after Impeachments have so long depended, is a Hardship to the Persons concerned, and not agreeable to the usual Methods and Proceedings of Parliament in such Cases.

Resolved, That this House will send an Answer to the said Messages relating to the said Impeachments by Messengers of their own.

And the Messengers were called in, and Mr. Speaker acquainted them therewith.

Veneris, 23 die Maii, 1701.

Sir Bartholomew Shurre reported from the Committee appointed to draw up the Articles of Impeachment, That they had considered of the Answer of Edward Earl of Oxford, and had drawn up a Replication thereunto, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and (with an Amendment) agreed unto by the House: And is as followeth: viz.

The Commons have considered the Answer of Edward Earl of Oxford, to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burghs assembled in Parliament; and do aver their Charge of High Crimes and Misdemeanours against him to be true, and that the said Earl is guilty in such manner as he stands accused and impeached; and that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that Purpose.

Ordered, That the said Replication be engrossed.

Sir Bartholomew Shurre also reported from the said Committee, That they had directed him to move, that they may have Power to send for Petitions, Papers, and Records, that shall be thought necessary to be used at the Trial of the said Earl; and to proceed in the most speedy and secret Way they can for the Advantage of the Prosecution.

Ordered, That the said Committee have Power to send for Petitions, Papers, and Records, that shall be thought necessary to be used at the Trial of the said Earl; and to proceed in the most speedy and secret Way they can for the Advantage of the Prosecution.

Ordered, That the said Committee have Power to send some of their Number to examine Mr. Samuel Shepherd in the Tavern.

Ordered, That the said Committee do consider of the Messages from the Lords relating to the Impeachments, and inspect the Precedents of Messages in relation to former Impeachments, and report the same to the House.

Sabbati, 24 die Maii, 1701.

A Message from the Lords by Sir John Hygham and Sir Robert Legard.

3

Mr. Speaker. The Lords have commanded us to acquaint this House with Copy of the Answer of John Lord Somers, to one of a Message, which Articles exhibited by the Knights, Citizens, and Burghs in Parliament assembled, in the Name of themselves, and of all the Commons of England, in maintenance of their Impugnment against him for High Crimes and Misdemeanours, supposed to be by him committed; and they delivered the same in accordingly.

Lance, 26 die Maii, 1701.

Ordered, That the Answer of the Lord Somers to the Articles of Impeachment exhibited against him, be read To-morrow Morning at Eleven o'Clock.

Mercurii, 27 die Maii, 1701.

The Answer of the Lord Somers to the Articles of Impeachment exhibited against him was, according to Order, read, and is as followeth: viz. *The Answer of John Lord Somers, Baron of Epsom, in the Articles exhibited by the Knights, Citizens, and Burghs in Parliament assembled, in the Name of themselves, and of all the Commons of England, in maintenance of their Impugnment against him for High Crimes and Misdemeanours. John said by him to be committed.*

[This Answer being in Vol. V. Page 345, & f. g. is here omitted.]

Ordered, That the said Answer be referred to the Committee appointed to draw up the Articles of Impeachment.

Ordered, That it be referred to the said Committee to prepare a Replication thereunto.

The engrossed Replication to the Answer of the Earl of Oxford to the Articles of Impeachment exhibited against him, was read.

Sabbati, 31 die Maii, 1701.

Mr. Bramley reported from the Committee to whom it was referred to draw up the Articles of Impeachment, and who were to consider of the Messages from the Lords relating to the Impeachments, and inspect the Precedents of Messages in relation to former Impeachments, and report the same to the House. They they had considered the said Messages, and inspected the Precedents; and that they had drawn up an Answer to the Messages from the Lords the twenty-first instant, and had directed him to report the same to the House; which he read in his Place, and afterwards delivered in at the Table; where the same was read, and is as followeth: viz.

In Answer to your Lordships Message of the twenty-first instant, the Commons have prepared a Replication to the Earl of Oxford's Answer to the Articles of Impeachment of High Crimes and Misdemeanours, exhibited against him, and at present defer bringing it up to your Lordships, because in the Trial of the several Impeachments now depending, the Commons think it most proper, from the Nature of the Evidence that will be given at the said Trials, to begin with the Trial of the Impeachment of John Lord Somers of High Crimes and Misdemeanours.

As to your Lordships other Message, the Commons take it to be without Precedent, and unparliamentary; they, as Prosecutors, having a Liberty to exhibit their Articles of Impeachment at due time, of which they, who are to prepare them, are the proper Judges; and therefore, for your Lordships to assert, That having not yet exhibited particular Articles against William Earl of Portland, and Charles Lord Halifax, is a Hardship to them, and not agreeable to the usual Methods and Proceedings in Parliament in such Cases, does, as they conceive, tend to the Breach of that good Correspondence between the Two Houses, which ought to be mutually preferred.

Resolved, That the House doth agree, That the said Answer be returned to the Lords to their Lordships said Messages.

Ordered, That Mr. Bramley do carry the said Answer to the Lords.

Sir Bartholomew Shurre also reported from the said Committee, That they had drawn up a Replication to the Answer of the Lord Somers to the Articles of Impeachment exhibited against him, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read and agreed unto by the House: And is as followeth: viz.

The Commons have considered the Answer of John Lord Somers to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burghs assembled in Parliament, for High Crimes and Misdemeanours. The said Commons do aver their Charge against the said Lord Somers to be true; and do say, that he is guilty in the Manner as he stands accused and impeached; and the said Commons will be ready to prove the same at such convenient Time as shall be appointed for that Purpose.

Ordered, That the said Replication be engrossed.

A Message from the Lords by Sir John Hygham and Sir Robert Legard.

Ad. Speaker. The Lords have commanded us to acquaint this House, That their Lordships have appointed Monday the ninth Day of June next, for the Trial of Edward Earl of Oxford, upon the Articles brought up against him by the House, in Westminster-Hall; and that this House may reply, if they think fit.

They also have commanded us to acquaint this House, That this House having, on the fifth Day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, for High Crimes and Misdemeanours, and having also, on the sixteenth Day of the same Month, impeached Charles Lord Halifax for High Crimes and Misdemeanours; and these being as yet so particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concerned, and not agreeable to the usual Methods of Parliament in such Cases.

Resolved, That an Answer be returned to the said Message, relating to the appointing a Time for the Trial of the Earl of Oxford, and to the Articles of Impeachment against the Earl of Portland, and Lord Halifax; and this House will return an Answer by Messengers of their own. And the Messengers were called in again, and Mr. Speaker acquainted them therewith.

Resolved,

Resolved, That a Committee be appointed to consider of the said Messages, and to lay the same before the House, and to draw up an Answer to be presented to the Lords, and a Committee was accordingly appointed, and was to sit at six o'clock.

Mercurii, 4 die Junii, 1701.

A Message from the Lords by Sir Richard Hylford and Mr. Pitt. *Mr. Speaker*, The Lords do think fit, upon Occasion of the Message from the House of the thirty-first of May, to acquaint that House, That having been delayed by the Lord Somers, that a Day may be appointed for his speedy Trial, and their Lordships being no less joined, by Resolution of the House of Commons, judge it proper to give three Months thereunto, that the Commons may reply, if they think fit; and at the same Time their Lordships by the Commons know, that they will proceed in the Trial of any of the impeached Lords whom the Commons shall be ready first to begin with, so as there may be no Occasion taken from thence for any unreasonable Delay in the Prosecution of any of them: And farther to enquire in them, That having searched their own Journals, they do not find, that after a general Impeachment, there has ever been so long a Delay of bringing up the particular Articles of Impeachment, fitting the Parliament: And therefore the Lords do think they had Reason to advise, That it was a Hardship to the two Lords concerned especially after their Lordships had put the House of Commons in mind of exhibiting their Articles, and not agreeable to the usual Proceedings in Parliament, and as the Lords do not consent what Right the Commons may have of impeaching in general Terms, if they please, in the Lords, in whom the Judicature does entirely reside, think themselves obliged to shew, That the Right of limiting a convenient Time for bringing the particular Charge before them, for the avoiding Delay in Justice, is lodged in them.

The Lords hope the Commons on their Part will be as careful not to do any thing that may tend to the Interruption of the good Correspondence between the two Houses, as the Lords shall ever be on their Part, and the best way to preserve that is, for neither of the two Houses to exceed those Limits which the Law and Custom of Parliament have already established.

Mr. Herriot, according to Order, reported from the Committee, who were appointed to consider of the Message from the Lords of Saturday last, and search Precedents in relation thereto, and prepare an Answer to the said Message, That they had considered the said Message, and searched Precedents, and had drawn up an Answer accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and with some Amendments, agreed unto by the House, and is as followeth; viz.

The Commons, on Consideration of your Lordships Message to them of the thirty-first of May, concerning the Trial of *Oxford*, think it their undoubted Right, when several Persons stand impeached before your Lordships, to bring to Trial such of them in the first Place as the Commons apprehend, from the Nature of the Evidence, ought first to be proceeded against, so the latest of such Offenders may in due Time be brought to Justice; and that no Day ought to be appointed by your Lordships for the Trial of any Impeachment by the Commons, without some previous Signification to your Lordships from the Commons, of their being ready to proceed thereon.

The Commons could not receive this Message from your Lordships without the greatest Surprise; your Lordships Proceedings in this Case being neither warranted by Precedents, nor (as the Commons conceive) consistent with the Methods of Justice, or with Reason: Wherefore the Commons cannot agree to the Day appointed by your Lordships for the Trial of the Earl of *Oxford*.

As to your Lordships Message at the same Time, relating to the Earl of *Portland* and *Charles Lord Hylborne*, the Commons take the same to be without Precedent, and unparliamentary; and conceive your Lordships frequent Repetition thereof in so short a Time after the Commons had transmitted to your Lordships their Articles against two of the impeached Lords, and were daily preparing their Articles against the others, manifestly tends to the Delay of Justice, is subverting the Trials of the impeached Lords, by introducing Disputes in Breach of that good Correspondence between the two Houses, which ought invariably to be preserved.

Ordered, That *Mr. Herriot* do carry the said Answer to the Lords. A Motion being made, and the Question being put, That the regretted Repetition to the Answer of the Lord Somers to the Articles of Impeachment exhibited against him, be now read;

It passed in the Negative.

Ordered, That the Message from the Lords this Day reaching the Impeachment, be taken into Consideration To-morrow Morning.

Junii, 5 die Junii, 1701.

The House, according to Order, proceeded to take into Consideration the Message Yesterday from the Lords relating to the Impeachments, and the same being read,

Resolved, That a Conference be defined with the Lords, upon the Subject Matter of the said Message.

Ordered, That the said Message be referred to the Committee appointed to draw up the Articles of Impeachment; and that they do draw up what is to be offered to the Lords at the said Conference.

Franci, 6 die Junii, 1701.

Mr. Herriot reported from the Committee appointed to draw up Articles of Impeachment, and who were to consider of the Message from the Lords the fourth of June instant, and to draw up what shall be offered at a Conference with the Lords upon the Subject-Matter of the said Message, That they had drawn up the same accordingly, and had directed him to report the same to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and agreed unto by the House, and is as followeth; viz.

* Though this Message is printed in Vol. V. Pag. 361-371, to preserve the Consistency, and as it is printed in the Commons Proceedings, is here inserted, as are some other Messages.

The Commons have defined this Conference upon your Lordships Message of the fourth of June, in order to put a good End to the Trial of your Lordships; which will shew that the Commons are ready to do all that is in their Power, in order to do Justice, and to preserve the Peace of the Kingdom, and to prevent any further Delay in the Trial of your Lordships have thought fit to send to the Commons, and the Commons, from 4 o'clock onwards expediting the Trials, which the Commons in each degree, but may rather furnish Matter of Dispute between the two Houses, the Commons therefore choose to follow the Methods formerly used in good Success upon the like Occasions, and for this purpose speedily and easily adjusting and preventing any Differences, which have already happened, or may arise, previous to or upon these Trials, the Commons do propose to your Lordships, that a Committee of both Houses be appointed to consider of the most proper Ways and Methods of proceeding on Impeachments, according to the Usage of Parliament.

Ordered, That *Mr. St. John* do go to the Lords, and desire the said Conference.

Mr. St. John reported, That he having (according to Order) been at the Lords to-day - a Conference, the Lords do agree to a Conference accordingly, and appoint the first presently in the next Chamber.

With a Trial, the Commons who were appointed to draw up Articles of Impeachment do manage the said Conference.

And the Message went to the Conference, and being considered, *Mr. Herriot* reported, That it had been at the Court since, and delivered to the Lords what the House had directed, and that the impeached Lords were sent at the Conference.

Lanc, 9 die Junii, 1701.

Mr. Brage reported from the Committee, so when it was referred to draw up Articles of Impeachment, That they had drawn up Articles accordingly against *Gloria Lord Halifax*, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and agreed unto by the House, and are as followeth, viz.

Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in Maintenance of their Impeachment, against *Charles Lord Halifax*, of High Crimes and Misdemeanors.

[Their Articles being printed in Vol. V. Pag. 367, & 368, are here omitted.]

A Message from the Lords, by Sir Richard Hylford and Mr. Grey. *Mr. Speaker*, We are commanded by the Lords to acquaint this House, That

"In Answer to the Message of the House of Commons of the fourth instant, the Lords say, by their Message first on the third, wherein they declare themselves ready to proceed in the Trial of any of the impeached Lords whom the Commons shall be first ready to begin with, they have given a full Proof of their Willingness to comply with the Commons in any thing which may appear reasonable, in order to the speedy determining of the Impeachments now depending: And therefore (as the Lords conceive) the Commons had no Occasion to begin any Dispute on that Head; for these Lordships are careful to decline entering into a Controversy, which seems to them to be of no Use at present."

"The Lords think themselves obliged to affirm their undoubted Right to appoint a Day for the Trial of any Impeachment depending before them, if they see good Cause for it, without any previous Signification from the Commons of their being ready to proceed, which Right is warranted by many Precedents, as well as consistent to Justice and Reason; and that Lordships, according to the Example of their Ancestors, do always use that Right, with a Regard to the equal and impartial Administration of Justice, and with a due Care to prevent any unreasonable Delay."

"This being the Case, the Lords cannot but wonder that the Commons, without any Foundation for it, should make use of Expressions which, as their Lordships conceive, have never been used before by any House of Parliament to another; and which, if the like were returned, must necessarily destroy all good Correspondence between the two Houses."

"The last Part of the Commons Message being in itself a Repetition of only the former of the thirty-first of May, in which the Lords have already returned a full Answer, their Lordships think it not requisite to say more, than that they cannot speak with what Colour they will calling upon the House of Commons to begin their Answer against two Lords, whom the Commons have long since impeached in general Terms, can be said to send to the Del. of Justice. An Expression as the Lords think the Commons ought to have shewn their Reason; for their Lordships, in doing no more upon the Occasion of this Message of the Commons, think they have given a convincing Proof of their Moderation, and of their sincere Desire of preferring a good Correspondence between the two Houses, which is so necessary for the publick Security, as well as doing Right upon the Impeachment."

Ordered, That the said Message, relating to the Impeachment, be referred to the Committee who were appointed to draw up Articles of Impeachment, and to search Precedents, and to draw up an Answer thereunto.

A Message from the Lords by Sir Richard Hylford and Mr. Grey. *Mr. Speaker*, We are commanded by the Lords to acquaint this House, That the Lords have appointed the Trial of *John Lord Somers* on Friday next, on the Impeachment against him by this House.

Ordered, That the said Message be taken into Consideration To-morrow Morning.

by not taking Notice of the several just Exceptions to which that

Messengers is liable, both as to the Matter and Expressions.

The Lords have nothing, farther from their Thoughts, than the pos-

sition to do any thing which might have the least Appearance of

Harshness with Relation to the Commons.

But the Answer of the Lord Somers to the Articles exhibited against

him, having been sent down to the Commons on the twenty-fourth of

July last, and they having by their Messengers the thirty-first of July,

signified to their Lordships their Intents not beginning with the Trial

of his Impeachment as the first Issue.

The Lords, considering how far the Session is advanced, thought it

reasonable to approve the thirteen last Articles for the said Trial, their

Lordships finding several Precedents of appointing Trials in Impeach-

ment without a former Trial.

The Lords also think it incumbent upon them to endeavour to dis-

patech the Trials of all the impeached Lords before the Rising of the

Parliament. This is what Justice requires, and cannot be denied

upon a Matter of Impeachment: Nevertheless, that the Commons

may be free to defend their Lordships as to comply with them in any

Thing which may be consistent with Justice, they have appointed the

Trial of Impeachment against John Lord Somers on Tuesday the four-

teenth of this Instant June, at ten o'clock in the Forenoon, in the

House of Lords, which will be then sitting in High Court. And

Altho' I that they were commanded by the Lords to request the House,

That the Lords do agree to a free Conference with the Commons, at

the said, and do signify To-morrow at ten o'clock in the Painted-Chamber,

Ordered, That the said two last Messengers deliver to the Commons

who were appointed to draw up the Articles of Impeachment.

Passen, 13th July, 1701.

Mr. St. John reported to the Commons when it was moved to

draw up the Articles of Impeachment, and to whom the Messengers from

the Lords yesterday were directed, That they had drawn up an Answer

to the said Messengers, which they had directed to be sent to the House,

which he read in his Place, and afterwards delivered in at the Clerk's Table,

where the same was read and agreed unto by the House, and it was

as follows, viz.

"The House of Commons find greater Reason to insist upon these Pre-

cedents, as a Committee of both Houses from the two Messengers received

and afterwards delivered in at the Clerk's Table, where the same was read,

and is, as follows, viz.

"That the Managers appointed by this House met the Lords at a free

Conference, the Subject-Matter whereof was moved by Mr. Hennessy,

and immediately afterwards further argued by Sir Bartholomew Shower.

"It was insisted on by each of them, That the Resolutions offered by it

to the said Conference, were not sufficient for their Lordships

dismissing a Committee of both Houses, desired by the Commons

at the said Conference.

"That notwithstanding these Reasons, the Commons still thought a

Committee of both Houses absolutely necessary for adjusting and pre-

paring such Differences as had happened, or might arise previous to,

or upon the Trials; and therefore insisted that such a Committee should

be appointed before the Commons could proceed on any Trial.

"I was urged on this Reason for such a Committee, That many Dif-

ferences might happen, whereby the Trials might be obstructed, if the

Preliminaries should not be first adjusted, as one Speaker, that Point

of several Lords being under Impeachments of the same Crimes, vot-

ing on each others Trial, was mentioned.

"The Lord Steward replied, and nothing was offered by Sir Grace

but what was material and pertinent to the Matter in Question, and

agreeable to the Intent of His Majesty's Charter.

"That John Lord Hennessy spoke in some disorderly manner, and in his Lord-

ship's Discourse said things, of the like Impudency."

ON Tuesday there is, though I cannot find it so, because I am tired up by

the Orders of the House, yet it might have been done, that I was in the

Lords when in the City, as it appears on disputation, though I cannot go to

the Debate of it. The Commons resolution, as it is in the President, for the

said Impeachments they have almost all the good of the same given to me

in the House, and therefore we will not make any deal with us in the

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the House, and we will not make any deal with us in the House, and

Lord-Keeper is to declare it to; and also particularly to the Lord Seers.

Ordered,

That Candles be prepared for the House.
Then the House adjourn'd again to *Wythnigher-Hall*, and being there, the House was refused, and Proclamation made for Silence, the Lord-Keeper put the Question as follows.

That *John Lord Seers* be acquitted of the Articles of Impeachment against him exhibited by the House at *Commons*, and all Things therein contain'd; and that the said Impeachment be dismissed.

Then the Lord-Keeper asked every Lord, Whether *Consent*, or not *Consent*?

The Lord-Keeper declared, the Majority was for acquitting; and then declared, That *John Lord Seers* was acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contained; and the said Impeachment was dismissed; and then declared to the Lord Seers, that he was acquitted.

Then the House adjourn'd to the House above, and being come thither, the House was refused, and the following Orders made.

It is Considered, Ordered, and Adjudged, by the Lords Spiritual and Temporal in Parliament Assembled, That *John Lord Seers* shall be, and he is hereby acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contained; and that the said Impeachment shall be, and is hereby dismissed.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Proceedings in this House upon the Impeachment be printed; And that the Lords Commissions appointed to consider of the manner of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock, and inspect the Journals, and draw up the Matter relating thereto, in order to be printed, and report to the House.

After which Report read,

Ordered,

That the Sergeant do go with the Mace into *Wythnigher-Hall*, and Courts there, and Court of Request, and Places adjacent, and summon the Members there to attend the Service of the House immediately.

And he went accordingly; and being return'd,

Refused,

That the Lords have refused Justice to the Commons upon the Impeachment against the Lord Seers, by denying them a Committee of both Houses, which was desired by the Commons, as the proper and only Method of settling the necessary *Peelmenures*, in order to the proceeding to the Trial of the said Lord Seers with Effect: And afterwards, by proceeding to a pretended Trial of the said Lord, which could tend only to protect him from Justice, by colour of an illegal Acquittal, against which Proceedings of the Lords, the Commons do solemnly protest, as being contrary to the Rules of Justice, and therefore Null and Void.

Refused,

That the House of Lords, by the pretended Trial of *John Lord Seers*,

have endeavoured to overturn the Trial of Impeachment done in the House of Commons by the ancient Constitution of that House, and the Safety and Protection of the Commons against the Power of the Lords; and have made an Invasion upon the Liberties of the Commons, and a Foundation of Impunity to the greatest Offenders.

Refused,

That all the ill Consequences which may at this Time attend the Supply of the Supplies given by the Commons for supporting the Publick Peace, and maintaining the Balance of Europe, by supporting our Allies, and the Power of France, are to be imputed to these ill Proceedings, and to procure an Indemnity for their own enormous Crimes, have used their utmost Endeavours to make a Breach between the Two Houses.

Ordered,

That the Message this Day from the Lords be refer'd to the Committee who are appointed to draw up the Articles of Impeachment.

Ordered,

That the said Committee do consider of the Proceedings between the Two Houses relating to the Impeachment of Lords, and state to this House the Matter of Fact, in order to the Justification of this House in their Proceedings.

A Message from the Lords by Doctor Newton and Mr. Gys.

Mr. Speaker, In Answer to the Message of the House of Commons this Day, the Lords do acquaint the Commons, That they might have known by the Records of the House of Lords, that the Lords have proceeded in the Trial of the Lord Seers on *Tuesday* last, being the Day appointed; and the Commons not appearing to maintain these Articles against the said Lord, the Lords have, by Judgment of their House, acquitted him of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contained; and have dismissed the said Impeachment.

And the Lords have appointed *Monday* next for the Trial of the Earl of *Orford*, on which Day they will proceed on the said Trial.

The Commons fill going for a Committee of both Houses (which the Lords never can consent to) for the Records already given, their Lordships can infer nothing from their perfidiousity in that Demand, than that they never designed to bring any of their Impugnments to Trial.

As to the Lord *Newcastle*, his Answer is now before the House of Commons; and the Lords resolve to do Justice in that Matter.

Ordered,

That no Member of this House do presume to appear on *Monday* next at the pretended Trial of the Earl of *Orford*, upon pain of incurring the utmost Displeasure of this House.

The Copy of the Answer of *Charles Lord Halifax*, sent down from the Lords, to the Articles of Impeachment exhibited against him, and the Paper sent down from the Lords, entitled, *The Answer of John Lord Halifax*, in the Charge exhibited against him, being never read in the House of Commons, cannot be printed among the following Proceedings.

They are inserted in the Lords Proceedings, Vol. V.

N U M B E R XXXV.

Proceedings in the House of Commons and House of Lords relating to JAMES BOUCHER, *Gent.* *

Febru. 17 de Decembris, 1703.

A Message from Her Majesty, by Sir David Mordaunt, Gentleman-Usher of the Black Rod.

Mr. Speaker,

The Queen commands this Honourable House to attend Her Majesty immediately in the House of Peers.

Accordingly *Mr. Speaker*, with the House, went up to attend Her Majesty, and being return'd, *Mr. Speaker* reported, That Her Majesty had been pleas'd to give the Royal Assent to the Bill for granting an Aid to Her Majesty by a Land-Tax; and afterwards to make a most gracious Speech to both Houses, of which he had desired, and obtained a Copy, which he read to the House, and it is as follows, viz.

My Lords and Gentlemen,

I thank it proper, upon this Occasion, to acquaint you, That I have had unquestionable Informations of very ill Practices and Designs carried on in & about by Enemies from France, which might have proved extremely dangerous to the Peace of these Kingdoms; as you will see by the Particulars, which shall be laid before you, as soon as the several Examinations, relating to this Matter, can be fully perfected, and made publick without Prejudice. In the mean while, I make no Doubt, but by this reasonable Deficiency, I shall be able to give such Directions for our Security, as will effectually prevent any ill Consequences from these pernicious Designs.

Goodwill of the House of Commons.

I am very sensible of your great Readiness and Affection for the Publick Service, by presenting me so fully in the Session with a considerable Part of your Supplies. I depend entirely upon your continuing with the same Zeal to dispatch the Reminders of them; that so we may be prepared to give the speediest Assistance to our Allies, and so defeat the malicious Designs of our Enemies; who cannot be more industrious to contrive the Ruin of this Kingdom, and of the Protestant Religion, than I shall always be vigilant and careful, both for their present Preservation, and for their future Security.

Refused, Nonne Contradictum.

That an humble Address be presented to Her Majesty, returning the Thanks of this House for Her most gracious Speech from the Throne,

and for the communicating the Discovery Her Majesty hath made of the wicked Designs against Her Government; with Assurance, That this House will stand by and support Her Majesty and Her Government against all Persecutors, and all Her Enemies whatsoever.

Ordered,

That a Committee be appointed to draw up the said Address, and a Committee was appointed accordingly.

Ordered,

That the said Address be drawn up on the said Resolutions, and also upon the Debate of the House.

Sabbath, 18 de Decembris, 1703.

Mr. Broudy reported from the Committee, to whom it was refer'd to draw up an Address to his Majesty and Her Majesty, (according to the Order of Yesterday) That they had drawn up an Address accordingly, which they had desired him to report to the House, which he read in his Place, and afterwards deliver'd it in at the Table, where the same was read.

Refused, Nonne Contradictum.

That this House doth agree with the Committee in the said Address.

Refused,

That the said Address be presented to Her Majesty by the whole House.

Ordered,

That such Members of this House as are of Her Majesty's most Honourable Privy-Council, do humbly know Her Majesty's Pleasure, when she will be attended by this House.

Ordered,

That some Members be appointed to search the Lords Journals, as to their Proceedings in relation to the Examination of any Person who are disaffected to have a Design against Her Majesty's Government.

And they were appointed accordingly.

The humble Address of the House of Commons to the Queen.

Most Gracious Sovereign,

WE Your Majesty's most humble and loyal Subjects, the Commons in Parliament assembled, do receive Your Majesty our most humble and hearty Thanks for Your most gracious Speech from the Throne.

We are truly sensible of your Majesty's great Goodness, and of the Consideration You report in us, by communicating the Discovery of the ill Practices and Designs that have been carried on

* To be read before His Trial, in Vol. V. Page 300. These Proceedings were published by Order of the Two Houses of Parliament, and saw the Readers both Houses went upon: Which, with the Proceedings of the Journals of the House of Lords and House of Commons, will render them useful to Posterity.

"in Scotland, by Enclaves from France; whereby we have an Opportunity to repeat our unanimous Resolution to stand by and support Your Majesty, and the Succession in the Protestant Line, as limited by Law, against all Pretenders, and all Your Majesty's Enemies whatsoever."

"We want Words to express to Your Majesty the Devotion we have of our Conspiracies and Attempts to disturb the Peace and Prosperity of Your happy Government; under which we most thank our Security sufficiently provided for, since Your Majesty has been pleased to give such Directions as may prevent all ill Consequences from them."

"It is great Satisfaction to us, to find, That the Supplies we have already given are so acceptable to Your Majesty: We shall go on with the same Readiness, and Zeal to dispatch the Remainder of them, that we may enable Your Majesty to give the Speedier Assistance to your Allies, and to defeat the malicious Designs of Your Enemies. Your faithful Commons can never have the least Distrust of Your Majesty's Vigilance and Care for the Preservation of the Protestant Interest in general, of the Monarchy, and the Church of England, as by Law established. And we humbly beg Leave to assure Your Majesty, that we will never be discouraged, but will continue inviolent our Endeavours, by all proper Methods, to transmit them faithfully settled to Posterity."

London, 20th Decembris, 1703.

Mr. St. John reported, That the Members appointed to search the Lords Journals, as to their Proceedings, in relation to the Examination of any Persons, who are discovered to have a Design against Her Majesty's Government, had searched the Lords Journals accordingly; and he read in his Place what they had found therein, and delivered the same at the Table, where the same was again read.

A Motion being made, and the Question being proposed, That an humble Address be presented to Her Majesty, setting forth the great Concerns this House has for Her Majesty's Royal Prerogative, and the Resolution of this House to support the same, and that no Persons accused for Crime, who are Her Majesty's Prisoners, ought to be taken out of the Custody of the Crown, without Her Majesty's Leave; and a Debate arising in the House thereupon;

And a Motion being made, and the Question being put, That the Debate be adjourned, It passed in the Negative.

Then the main Question being put; Resolved, That an humble Address be presented to Her Majesty, setting forth the great Concerns this House has for Her Majesty's Royal Prerogative, and the Resolution of this House to support the same, and that no Persons accused for Crime, who are Her Majesty's Prisoners, ought to be taken out of the Custody of the Crown, without Her Majesty's Leave.

Ordered, That a Committee be appointed to draw up the said Address; and a Committee was appointed accordingly.

Ordered, That it be an Instruction to the said Committee, That they do draw up the said Address upon the said Resolutions, and upon the Debate of the House.

March, 31st Decembris, 1703.

Mr. Speaker reported, That the House did yesterday attend Her Majesty at St. James's, and presented to Her (her Address), and that Her Majesty was pleased to give a most gracious Answer, as followeth:

Gentlemen,

"I am very well pleased with your Assurances of dispatching the Supplies, and with the other Parts of this Address, in which you express so much Duty and Readiness to support, and to assist me. You may depend upon my Willingness to use my Endeavours with you, in securing to Posterity the Protestant Succession in the Monarchy, and the Church of England, as it is established by Law."

Mr. St. John reported from the Committee, to whom it was referred to draw up an Address upon the Resolutions of Yesterday, that they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Table, where the same was read, and (with an Amendment) agreed unto by the House.

Resolved, That the said Address be presented to Her Majesty by the whole House.

Ordered, That the said Address be presented to Her Majesty by the whole House. That such Members of this House as are of Her Majesty's most Honourable Privy-Council do humbly know Her Majesty's Pleasure, when the will be attended by this House.

London, 22nd Decembris, 1703.

Mr. Comptroller accounted the House, That Her Majesty having been humbly waited upon to know Her Pleasure, when she would be attended by this House. Her Majesty has been pleased to appoint To-morrow at Four o'Clock in the Afternoon, at St. James's.

Jeudi, 23rd Decembris, 1703.

The Humble ADDRESS of the House of Commons to the Queen.

Most Gracious Sovereign,

"We, Your Majesty's most dutiful and loyal Subjects, the Commons of England in Parliament assembled, beg Leave humbly to lay before Your Majesty the great and just Concern we are under, to see any Violation of Your Royal Prerogative."

"Your faithful Commons believe the Administration of the Government best secured when it is left to your Majesty, with whom the Law has intrusted it, and to be so free a Dependence upon Your Majesty's Affection to Your People, and Your great Wisdom, which they can never apprehend to be in Danger from any Conspiracy, in which the Examination thereof is under Your Majesty's Direction."

"We desire, that by the Lord Spiritual and Temporal in Parliament assembled, and by the Lords Spiritual and Temporal in Privy Council assembled, that the humble Representation of the House, presented to Her Majesty this Day, and Her Majesty's most gracious Answer thereupon, shall be forthwith printed and published."

"We are therefore surprised to find, That when several Persons, suspected of Treasonable Practices against Your Majesty, were taken into Custody by Your Majesty's Officers, in order to be examined; the Lords, in Violation of the known Laws of the Land, have wrested them out of Your Majesty's Hands, and without Your Majesty's Leave, or Knowledge, in a most extraordinary Manner, taken the Examination of them solely to themselves; whereby a due Enquiry into the said Practices and Designs against Your Majesty's Person and Government may, in great Measure, be obstructed."

"Your loyal Commons do, therefore most earnestly desire Your Majesty to suffer no Diminution of this Prerogative, which, during Your Majesty's Reign, they are confident will always be exerted at the Great of Your People."

"And we humbly beg Leave to assure Your Majesty, That should we be obliged by time, and all usual Supplies in usual Your Majesty to carry on the War, which You have so graciously begun, so we will, to the utmost of our Power, support Your Majesty in the Exercise of Your just Prerogative at Home, and the abridging it against all Invasions whatsoever."

London, 3rd Januarii, 1703.

Mr. Speaker reported, That he, with the House, did, before the Receipt, present to Her Majesty most humble Address of the twenty-ninth of December last; and that Her Majesty was pleased thereupon, to give this most gracious Answer.

Gentlemen,

"I have had the Satisfaction to find, that the Matter which may have occasioned this Address, is now at an End."

"I intend to many Thank for the Letter, in which you express my Proceedings, and for your repeated Assurances, in making the Supplies, especially, which will be greatly to the Honour and Advantage of the Kingdom."

"I shall be careful not to give way to any Invasion of the Prerogative of the Crown, or of the Rights and Liberties of the People."

Upon this Address of the House of Commons, the House of Lords drew up the following Representation.

The humble Report of the Lord Spiritual and Temporal in Parliament assembled, presented to Her Majesty, on Tuesday the Twentieth Day of January, 1703; and Her Majesty's most gracious Answer thereunto.

Die Lunæ, 17th Januarii, 1703.

May it please Your most Excellent Majesty,

"WE Your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, had ourselves under an unhappy Necessity of making the most humble Application to the House, upon a Motion of an Address presented to Your Majesty by the House of Commons, the twenty-third Day of December last, and since that Time published to the whole Nation in Print; by which the House of Lords is charged with the Violation of your Royal Prerogative, and of the known Laws of the Land, with wresting Persons subjected of Treasonable Practices, and taken into Custody by Messengers, out of Your Majesty's Hands, without Your Leave or Knowledge, and in a most extraordinary Manner taking the Examination of them all to themselves; whereby a due Enquiry into the said Practices and Designs against Your Majesty's Person and Government might in great Measure be obstructed. And they conclude their Address by most earnestly desiring Your Majesty to suffer no Diminution of Your Prerogative, and promise to support You in this asserting against all Invasions whatsoever. It is not possible for us to remain silent under this heavy Charge, in unjustly, and without the least Ground or Colour to be laid upon the whole Body of the Peers, which sending directly to create an ill Opinion of us in Your Majesty, puts us under an inevitable Necessity of vindicating both the Legality, and the dutiful Manner of our Proceedings."

The Expressions in the Address of the House of Commons are so very harsh and undecent, that we may truly affirm, that the Lord Spiritual and Temporal in Parliament assembled, had themselves under an unhappy Necessity of making the most humble Application to the House, upon a Motion of an Address presented to Your Majesty by the House of Commons, the twenty-third Day of December last, and since that Time published to the whole Nation in Print; by which the House of Lords is charged with the Violation of your Royal Prerogative, and of the known Laws of the Land, with wresting Persons subjected of Treasonable Practices, and taken into Custody by Messengers, out of Your Majesty's Hands, without Your Leave or Knowledge, and in a most extraordinary Manner taking the Examination of them all to themselves; whereby a due Enquiry into the said Practices and Designs against Your Majesty's Person and Government might in great Measure be obstructed. And they conclude their Address by most earnestly desiring Your Majesty to suffer no Diminution of Your Prerogative, and promise to support You in this asserting against all Invasions whatsoever. It is not possible for us to remain silent under this heavy Charge, in unjustly, and without the least Ground or Colour to be laid upon the whole Body of the Peers, which sending directly to create an ill Opinion of us in Your Majesty, puts us under an inevitable Necessity of vindicating both the Legality, and the dutiful Manner of our Proceedings."

The Matter of this Address is no less injurious to us than the Terms; there was not the least Occasion for a full Opposition to any Part of our Conduct in this Business, to which the Address alludes. The Proceeding was highly justifiable by the known Laws and Customs of Parliament; it was called on with the utmost Rectitude in Your Majesty, and with true Zeal for the Safety of your Person and Government; and it was done with agreed on by the concurrent Opinion of the House, without the least Objection from any of our Members, who have the Honour of bearing your Majesty in Your great Officers and Councils."

We humbly represent to Your Majesty, that by the known Laws and Customs of Parliament, the House of Peers has an undoubted Right, in Cases where they conceive to be for the Good and Safety of Your Majesty and the Kingdom, to take Examinations of Persons charged with criminal Matters, whether such Persons be taken in Custody or not, and also to order the Persons to be examined to be taken into Custody by Your Majesty's sworn Officers, attending the House during such Examination, or to commit them to any other safe Custody that they shall think fit."

Mark Jenkins, Clerk of Parliament.

25 April, 1679.

Whereas Sir *William Waller* is desired, and brought to Town in Custody, as at Agents, in the last stated Conspiracy against the King: It is to be Ordered, That the Officers, in which Sir *William Waller* is taken, shall forthwith deliver the said Sir *William Waller* into the Prison of the *Gatehouse*, at *Whitehall*, there to remain a Prisoner 'till further Order.

26 April, 1679.

Upon Report made from the Lords Commissioners, for examining Matters relating to the Discovery of the late *Lord* *Conspiring* against the King: That first Lordships have required Information made upon Oath, that Sir *William Waller*, now Prisoner in the *Gatehouse*, at *Whitehall*, is engaged in the Conspiracy, as set forth by the *Bill* in the Commons: It is thereupon Ordered, of the Lords Spiritual and Temporal in Parliament assembled, That the Keeper of the *Gatehouse* shall be, and is hereby required to take care, that the said Sir *William Waller* be forthwith conveyed and shut up into the Tower of *London*, there to remain a Prisoner, 'till he shall be discharged by due Course of Law; and for so doing this shall be a sufficient Warrant.

21 April, 1679.

Upon Report from the Committee for Examinations, That *James Allen*, who was taken up in Custody, being charged with encouraging *Elizabeth* *Goody* in the Conspiracy, both being examined by the Lordships, and dealt with as they charge upon them, and as regard the Examination taken concerning a *White* *Field* in *Paris*, *London*, are before a Committee of Council: It is Ordered, That the said *James Allen* be forthwith conveyed and shut up into the Tower of *London* to the said Committee, to be examined, and disposed of as they please.

Upon Report from the Committee of Examinations, That their Lordships find it necessary, that *William* *Argus*, now a Prisoner in the Gaol at *Whitehall*, should be brought to Town: It is Ordered, That the Sergeant at Arms attending this House, do forthwith repair to the Gaol at *Whitehall*, in *Essex*, and bring thence the Body of the said *William Argus*, and deliver him into the Prison of the *Gatehouse* at *Whitehall*, there to remain a Prisoner 'till further Order.

23 April, 1679.

Upon Report from the Lords Commissioners for Examinations, That their Lordships find it requisite, that *David* *Levy*, who hath been tried and condemned as a Popish Priest, at the Affairs held for the County of *Monmouth*, and is now in Gaol there, may be brought to Town: It is Ordered, That the Sheriff for the said County of *Monmouth* be, and is hereby required to take Care, and give Order for the speedy conveying of the said *David Levy* in Safety from the said Gaol, to be delivered into the Prison of *Newgate*, the Charges of which Service shall be allowed to the said Sheriff upon his Account in the Exchequer.

The like Order for *Roger* *Waller*, in the Gaol at *Geoffrey*.
The like Order for *John* *Kendall*, in the Gaol at *Whitehall*.
The like Order for *James* *Waller*, alias *Wick*, in the Gaol at *Whitehall*.

8 May, 1679.

The Earl of *Clarendon* reported from the Lords Commissioners for Examinations, That *William* *Harcourt*, the Jesuit, is taken, and now in the Hands of the Officer that took him: It is Ordered, That the said *William Harcourt* be brought to the Bar presently.

Eodem Die post Meridie.

William Harcourt was brought to the Bar, and being there charged with Treason, the House made the following Order.

Whereas *William Harcourt*, alias *Harcourt*, was this Day brought to the Bar; and was there charged with High Treason: It is Ordered, That the Gentleman Usher of the Black Rod, attending this House, do take special Care forthwith to convey the said *William Harcourt*, alias *Harcourt*, in Safety to *Newgate*, there to remain a Prisoner, 'till he shall be discharged by due Course of Law.

To the Gentleman Usher of the Black Rod, attending this House, &c.

Die Lunæ, 19 Maii, 1679.

Whereas *Richard* *Gervais*, Esq. is charged upon Oath with Treason: It is Ordered, That the Keeper of the Prison of the *Gatehouse*, at *Whitehall*, in which *Richard Gervais* now is, be, and is hereby required forthwith to take care for the conveying of the said *Richard Gervais* to the Prison of *Newgate*, there to remain a Prisoner 'till he shall be discharged by due Course of Law; and this shall be a sufficient Warrant in that behalf.

20 Octobris, 1678.

It being signified to the House, That *Oliver* *Plunkett*, the Titular Primate of *Armagh* in the Kingdom of *Ireland*, is, by His Majesty's Order, brought over to the Bar, in order to his Trial there, and is now in Custody in the Hands of a Messenger: It is Ordered, That the Messenger, in whose Hands the said *Oliver Plunkett* now is, be, and is hereby authorized and required, forthwith to convey and deliver the Body of the said *Oliver Plunkett* into the Prison of *Newgate*, and that the Keeper of the said Prison do keep him there in Safety, 'till he shall be discharged by due Course of Law; and that the said Keeper and his Under Officers do take care, that the said *Oliver Plunkett* be kept as a close Prisoner, 'till the Pleasure of this House be further signified; and this shall be a sufficient Warrant in that behalf.

To the Messenger, who is to be called to the said Officer *Plunkett* in, and also to the Keeper of the Prison of *Newgate*, his Deputy and Under-Officers, and every of them.

4 Januarii, 1678.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That Mr. *Andrew* *Goody* do peruse the Information read this Day, and draw Warrants for the Commitments of Sir *John* *Fitzgerald*, Colonel

Pierce *Lox*, and Lieutenant Colonel *Brady*, as may be available in the Law, and attend the Judges for trial; and that the same be done at the same time, as the House shall order, as the Clerk in the Forenoon.

Ordered, That Sir *John* *Fitzgerald*, Colonel *Pierce* *Lox*, and Lieutenant Colonel *Brady*, do remain in the Custody of the Parliament, as now they are, 'till the House give further Order.

5 Januarii, 1678.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, That Sir *John* *Fitzgerald* be committed to the *Gatehouse* for Treason, in compassing the King's Death, and in levying War, and procuring to introduce a Foreign Force into the Kingdom of *Ireland*, and to take the King from the Crown of *Ireland*; and that the Messenger, in whose Hands the said Sir *John* *Fitzgerald* now is, be, and is hereby authorized and required, to convey and deliver the Body of the said Sir *John* *Fitzgerald* into the Prison of the *Gatehouse*; and that the Keeper of the said Prison do receive and keep him there in safe Custody, 'till he shall be discharged by due Course of Law: And this shall be a sufficient Warrant in that behalf.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, That *Pierce* *Lox*, Esq. be committed to *Newgate* for Treason, in compassing the Death of the King, and in levying War, and procuring to introduce a Foreign Force into the Kingdom of *Ireland*, and to take the King from the Crown of *Ireland*, and that the Messenger, in whose Hands the said *Pierce* *Lox* now is, be, and is hereby authorized and required, forthwith to convey and deliver the Body of the said *Pierce* *Lox* into the Prison of *Newgate*; and that the Keeper of the said Prison do receive and keep him there in safe Custody, 'till he shall be discharged by due Course of Law: And this shall be a sufficient Warrant in that behalf.

The like Order for Colonel *William* *Brady*.

Die Martis, 10 Dec. Duobus, 1679.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, That Mr. *Verney*, now in Custody, do stand committed to the Gentleman Usher of the Black Rod attending this House. And it is further Ordered, That the said Gentleman Usher go to the Lodging of the said *Verney*, and secure his Papers, and shut them up in his Presence, and let a Guard on his House or Lodging.

PRECEDENTS out of the Journals of the House of COMMONS.

No. II.

21 Martii, 14 Car. II.

UPON Information, That *George* *Waller* had been the Author and Publisher of a scandalous and seditious Pamphlet, to enrage the People, and to stir up and seduce the Members of this House, and to blaspheme the Honor and Justice of this House, and these Proceedings, and was now a Prisoner in *Newgate*:

Resolved, That the said *George* *Waller* be brought in Custody of the Sergeant at Arms attending this House, or his Deputy, to the Bar of this House, at Four of the Clock this Afternoon, to be examined touching the Matters charged against him, and the Keeper of *Newgate*, or his Deputy, to cause him to be brought accordingly.

Resolved, That this House do adjourn 'till Three of the Clock this Afternoon.

George *Waller* being then brought in Custody to the Bar of this House, and the scandalous, seditious Libel, with which he stands charged, being shewn unto him, the same being an Two distinct Papers; upon View of the full of them, he declared, That the same were his Hands, but that it was but Parcel of his mind, and the other Writing being shewn unto him, he confessed the same to be of his own Hand Writing; and two Witnesses being called in, was *Henry* *Northey*, and *Robert* *Boyle*, and testifying that they took the said Papers from under Mr. *Waller*'s Hand, and that he was writing Part of them just when they were taken from him; and that he did, upon Examination before Mr. *Attorney-General*, confess the said Papers to be of his own composing and drawing.

Resolved upon the Speech, That *George* *Waller*, who was this Day brought from the Prison of *Newgate* to the Bar of this House, be first Prisoner, and delivered into the Custody of the Lieutenant of the Tower, there to be kept in close Custody, and to be denied Pen, Ink, and Paper, and required from having any Company to come unto him. And it is ordered unto Mr. *Pope*, Mr. *Sergeant* *Charles*, Mr. *Solomon* *Graham*, Mr. *Almon*, Mr. *Boyle*, Mr. *Thornhill*, Mr. *Payne*, Mr. *Foxwell*, and Mr. *Gifford*, or any Three of them, to peruse the said seditious Libel by him composed, and draw up an Impeachment against him, and report it to the House at their next Meeting.

21 Octobris, 1678.

Ordered, That a Committee be appointed to examine concerning the Murder of Sir *Edmund* *Gaillard*, and to enquire into the same: and Means how he came by his Death, and likewise to enquire into the Particulars of the Plot and Government, mentioned in His Majesty's Speech, against his Person and Government, which Committee was empowered to read for Pen, Ink, and Paper, and Records.

Resolved, That an Address be made to His Majesty by such Members of this House as are of His Majesty's Privy-Council, humbly to desire His Majesty, that all Papers which do relate to the Plot and Conspiracy, mentioned in His Majesty's Speech, against his Person and Government, may be communicated to the said Committee.

23 Octobris, 1678.

Resolved, &c. That the Matter concerning the Plot and Conspiracy, mentioned in His Majesty's Speech, against his Person and Government, be heard at the Bar of the House.

Ordered, That Mr. *Michael* *Gaillard* be forthwith sent for to attend with the Papers and Examinations, taken by Sir *Edmund* *Gaillard*, and now remaining in his Custody sealed up, touching the Plot and Conspiracy mentioned in his Majesty's Speech.

24 Octobris.

Ordered, That the Examinations taken before the Lords of the Treasury, relating to the irregular Indorsement of the *Exchequer Bills*, be laid before this House.

A Motion being made, That the House will order, that all Prosecutions at Law against the said Mr. *Morris*, be stayed during the Pleasure of the House.

And a Debate arising thereupon;

Resolved, That the Debate be adjourned 'till To-morrow Morning.
Ordered, That the said Mr. *Morris* be taken into Custody of the Sergeant at Arms attending this House; and that no Person be permitted to converse with, or bring any Letters to him, without Leave of the House.

5 *January*, 1709.

Mr. *Lawson*, according to Order, presented to the House several Papers relating to the Examination taken before the Lords of the Treasury, touching the false Indorsement of the *Exchequer Bills*.

The House returned the adjourned Debate of Yesterday, touching the ordering the Stay of any Prosecution at Law against Mr. *Morris*.

Ordered, *Novus Contrahens*, *et alii* *Procurator* = *Law* against Mr. *Reynold Morris*, in relation to the false Indorsement of *Exchequer Bills* be stayed, during the Pleasure of this House.

But nothing more was done in this Business; for *April* the third, 1709, her Majesty came to this House, and presaged the Parliament, and concluded her Speech thus:

My Lords and Gentlemen,

"*A*T the Opening of this Session, I did earnestly express my Desires of seeing you in perfect Unity among yourselves, in the most effectual Means imaginable to disengage the Amities of our Enemies, and reduce them to an honest and lasting Peace; and though this has not yet been accomplished, yet nothing is so necessary as our common Welfare, I am not discouraged from publishing in the same earnest Desires, That you would go down into your several Counties, to dispel to *Malicious* and *Unjust*, as becomes all those who are joined together in the same Religion and Interest."

N U M B E R XXXVI.

An Account of what passed most remarkable in the Sessions of Parliament, 1709, in the House of Commons, relating to the Case of Dr. HENRY SACHEVERELL.

December the 1st day, 1709.

A Complaint being made, this Day, in the House of Commons, of two printed Books, the one entitled, *The Communication of Sin; A Sermon preached at the Assize held at Derby, August 15, 1709, by the said Henry Sacheverell*: And the other entitled, *The Peril of False Brethren both in Church and State; or, Sinners preached before the Right Honourable the Lord Mayor, Aldermen, and Citizens of London, at the Cathedral Church of St. Paul's, on the 5th of November, 1709, preached also by the said Dr. Henry Sacheverell*, and both printed for Henry Clowes: These Books were delivered at the Table; where several Paragraphs in the Epistle Dedicatory, preceding the first mentioned Book, and also several Paragraphs in the latter Book, were read.

Resolved, That a Book, entitled, *The Communication of Sin; being a Sermon preached at the Assize held at Derby, August 15, 1709: And a Book, entitled, The Peril of False Brethren both in Church and State; or, Sinners preached before the Right Honourable the Lord Mayor, Aldermen, and Citizens of London, at the Cathedral Church of St. Paul's, on the 5th of November, 1709, are malicious, scandalous, and seditious Libels; highly reflecting upon her Majesty and Government, the late happy Revolution, and the Protestant Succession as by Law established, and both Houses of Parliament, tending to alienate the Affections of her Majesty's good Subjects, and to create Jealousies and Divisions among them.*

Ordered, That Dr. Henry Sacheverell, and Henry Clowes, do attend at the Bar of the House To-morrow.

John Deane, Esq. made the first Motion against the two Sermons, and was seconded by *Speaker Cragg*, Esq.

They were opposed by several Gentlemen; who said, they did not perceive there was any thing in the sermons malicious, scandalous, or seditious; nor reflecting on her Majesty and Government, the late happy Revolution, and the Protestant Succession as by Law established; of which they did not observe any Mention; neither had the Paragraphs the least Relation to it. What concerned both Houses of Parliament, was supposed to be the Vote passed four or five Year before, about the Church being in Danger: And as to that, it was affirmed, the Church was then in Danger, was still in Danger, and it was to be feared, would always be in Danger; not from her Majesty's Administration, but from Papists on the one Hand, and Fanatics on the other; from their professed Enemies, and from *False Brethren*. It was owned, there were some warm Expressions in the Sermon preached at St. Paul's: And no wonder that a true Son of the Church of England should express himself with force and Warmth and Vehemence against the Libertins then taken, and with Impetuosity, to revive the Church, her Doctrine, and Ministers, to blaspheme the Name of God, and to insult, and treat with Contempt, every Thing that is sacred. To this little was returned, besides some objections against the Sermons; and particularly against the Doctrine of *Papal Jurisdiction* and *Non-Resistance*.

December 14.

The House being informed, that Dr. Henry Sacheverell and Henry Clowes attended, according to Order, Dr. Sacheverell was called in, and, at the Bar, was examined touching the two Sermons Yesterday complained of to the House: Where he owned the Preaching, the printing, and the Publishing the Sermon preached the 5th of November, 1709, at the Cathedral Church of St. Paul, and the Dedication of it, and also, that the Epistle Dedicatory to the Sermon, preached at the Assize at Derby, the 15th of August, 1709, was verbatim to that which he put to the Impression of that Sermon, and a Question being proposed, That the said Dr. Henry Sacheverell be impeached of High Crimes and Misdemeanours; he was called in again, and asked, if he had any Thing to offer to the House? When he spoke to this Effect:

My Speech,

"I am very sorry I am fallen under the Displeasure of this House; I

"did not imagine any Expressions in my Sermons were liable to such a Censure as you have passed upon them. If you had been pleased to have favoured me so far, as to have heard me before you passed it, I hope I should have explained myself so as to have prevented it."

And after being heard, he was directed to withdraw.

Then the Question was put, for impeaching the Doctor of High Crimes and Misdemeanours. And several Gentlemen spoke against it, desiring he might rather be prosecuted by the Attorney-General, and if the Sermons were seditious, it they did reflect on her Majesty and Government, the happy Revolution, and the Protestant Succession as by Law established, the Doctor would be convicted, and punished for them according to his Demerits. But if (as common Fame said) the Judges and the Queen's learned Council, had been consulted, and were of Opinion, the Doctor could not be punished for them by the ordinary Proceedings in the Courts of Law; they thought it was very unreasonable, by an Impeachment in Parliament, to endeavour to make a Man guilty, and a Criminal, that, by the Laws of the Land, was innocent. However, it was

Resolved, That the said Dr. Henry Sacheverell be impeached of High Crimes and Misdemeanours.

Ordered, That Mr. *Dillon* do go to the Lords, and, at the Bar, in the Name of all the Commons of Great-Britain, impeach the said Dr. Henry Sacheverell of High Crimes and Misdemeanours, and acquaint the Lords, that the House will, in due Time, exhibit Articles against the said Henry Sacheverell.

Ordered,

That a Committee be appointed to draw up Articles of Impeachment against the said Dr. Henry Sacheverell.

And a Committee was appointed accordingly. And they have Power to send for Papers, Papers, and Records, and to sit to do so.

Then Henry Clowes was called in, and, at the Bar, was examined touching his Printing and Publishing the said two Books: Which he owned, and that he had the Copies of them from Dr. Sacheverell. After which he was directed to withdraw.

Ordered,

That the said Dr. Henry Sacheverell be taken into the Custody of the Sergeant at Arms attending the House.

On *Sunday* *Gordon*, Bart. Lord Mayor of the City of London, was in the House, in his Place: And the Speaker observing to the Doctor, that the House took Notice, he had affirmed, in the Epistle Dedicatory to my Lord Mayor of London, before the Sermon preached at St. Paul's, that he had published it by his Lordship's Command, he was asked, Whether my Lord Mayor did command him to publish his Sermon? To which he answered, "That, in the first Sent of the Word Command, he did not; but in the common Acceptation of the Word, as the Doctor of Supper says to his Inferiors are said to be Commanded, he did command him; for he did desire and press him to print it." Then he gave a particular Account of the Conversation he had, at several Times, with my Lord Mayor about it, though his Lordship thought fit peremptorily to deny it. After this, the two following Resolutions passed:

Resolved,

That the Reverend Mr. *Benjamin Hadley*, Rector of St. Peter Parva, London, for having often strenuously justified the Principles on which her Majesty and the Nation proceeded in the late happy Revolution, hath justly merited the Favour and Recommendation of this House.

Resolved,

That an humble Address be presented to her Majesty, that she will be graciously pleased to bestow some Dignity in the Church on the said Mr. *Hadley*, for his eminent Services both to Church and State.

These were proposed by *Mr. Hadley*, Esq. and seconded by Sir *Jos. Yorke*. The House was in great Confusion, it being late, and every one expecting immediately to rise. However, there were several N-givers to their Resolutions: And when they came to be considered, they were

* For an Account of the Differences between the Lords and Commons, relating to the Examination of *Bowling*, see also *Sir John Baker's History of his own Times*, Vol. II. Page 717, 718.

† The Title printed in Vol. V. Page 445. begins with the Proceedings in the House of Lords, and no Notice of the Steps taken in the House of Commons preceding it; therefore the above Proceedings should be read as an Introduction to that Title.

generally thought to be strange Resolutions, with Regard to her Majesty, who had approved a Sermon preached before her by the Bishop of Exeter, and desired him to print it. Against that Sermon Mr. Hooley went, and engaged in Conversation with the Bishop; yet he is declared to have justly merited the Favour and Recommendation of the House, and the Queen is desired to bestow some Dignity in the Church on him for their eminent Services. This Proceeding was thought to suppose, or impute to her Majesty, that several, who were otherwise against Dr. Sackville, blamed it very freely. And it was very observable, Mr. Lockhart took an Occasion, some Time after, upon another Debate, to confute it.

December 15.

Ordered,

That Mr. Dolben [when he goes to the Lords to impeach Dr. Henry Sackville of High Crimes and Misdemeanours] do acquaint the Lords, That the said Henry Sackville is in Custody of the Sergeant at Arms attending the House, ready to be delivered to the Gentleman-Usher of the Black-Rod, when the Lords shall please to give Order therein.

Mr. Dolben reported to the House, That he had, pursuant to this Order, been at the Lords; and, at their Bar, had impeached Dr. Henry Sackville of High Crimes and Misdemeanours; and had also acquainted the Lords with their other Order.

December 17.

A Petition of Henry Sackville, D. D. in Custody of the Sergeant at Arms attending the House, was presented to the House, and read; praying, That the House would be pleased to order him to be admitted to Bail, that he may have an Opportunity of making his Defence, being informed, that he is impeached at the Bar of the House of Lords for High Crimes and Misdemeanours.

Ordered,

That a Committee be appointed to search Precedents concerning the taking Bail in Cases of Persons committed for High Crimes and Misdemeanours; and that they do make their Report thereof to the House upon Monday following next.

Ordered,

That it be referred to the Committee, who are to draw up the Articles of Impeachment against Dr. Henry Sackville, to search Precedents, and make Report thereof to the House.

Ordered,

There was some Debate before the House ordered a Committee.

December 19.

Mr. Dolben acquainted the House, That the Committee, who were upon Saturday last appointed to search Precedents concerning the taking Bail in Cases of Persons committed for High Crimes and Misdemeanours, and to report the same to the House this Day, had made all the Progress they could in so short a Time; but that they found it required more Time, and had directed him to move, That they may have further Time to make their Report.

Ordered,

That the said Committee do search the Lords Journals, in relation to the Proceedings upon Impeachments by the Commons, and make their Report thereof to the House with all convenient Speed.

Ordered,

That all Committees be adjourned, except the Committee who are appointed to draw up the Articles of Impeachment against Dr. Henry Sackville, and who are to search the Lords Journals in relation to the Proceedings upon Impeachments by the Commons.

December 22.

Mr. Dolben reported, from the Committee appointed to search Precedents concerning the taking Bail in Cases of Persons committed for High Crimes and Misdemeanours, and to search the Lords Journals in Relation to the Proceedings upon Impeachments by the Commons, and to make their Report to the House, That they had searched Precedents, and the Lords Journals accordingly; and had directed him to report what Precedents they had found, which be read in his Place, and afterwards delivered in at the Table, where the same were read.

And a Motion being made, and the Question being put, That Dr. Henry Sackville be admitted to Bail, according to the Prayer of his Petition, it passed in the Negative.

Yea 79, Nay 114.

In the Debate on this Matter, there was a great Variety of Opinions: Some thought the Commons might bail a Person committed by them, but not in this Case: Others, that it was discretionary in them, whether they would bail or not; and that this Person deserved it not from them; and one that the Commons could never bail in any Case. Others insisted, in Favour of Liberty, that if they could bail, they ought to bail; and that they could bail, argued from the Equity and Reasonableness of the Thing, that those who could commit might bail: They showed Precedents in the Case of Mr. Symonds, and the Smugglers, impeached for High Crimes and Misdemeanours; in one of which, the Persons impeached and committed by the House of Commons, were admitted to Bail; in the other, the Commons, upon their Petition, consented to bail them; and they had been bailed, but their Sureties made Objections to the Condition of their Bonds, and would not submit to it. Besides, it was urged, that this Case was an itself bailable, and so agreed by all Gentlemen; and that the Doctor's Hardship might be the greater, because it was probable, if the Commons did not bail him, he might be in Calvary, when bailable by Law, till after the Recess of Parliament: For the Articles not being returned to the Lords against him, it was thought the Lords would not give him one of the Callows of the Commons, and commit him upon a special Charge, and till they committed him, they could not bail him. This was his Case, for upon Application to the Lords, they refused to commit him, till the Commons had exhibited their Articles: The Lords said, the Commons might never exhibit any; and they would not do so unreasonably a Thing, as to commit any one on a general Charge. And so, by a Pillory for the Commitment of the House of Commons, in a Case bailable by Law (and for which there were Precedents, for the

Commons admitting to Bail, *see* *Journal* 14, to January 11. It is fitting to observe, that some have expected the bailing the Doctor, one Part of the Message delivered by Mr. Dolben to the Lords, when he impeached him at their Bar, to be that the Doctor was in Custody of the Sergeant at Arms attending the House, ready to be delivered to the Gentleman-Usher of the Black-Rod, when the Lords should please to give Order therein: But others, that agreed with them against admitting him to Bail, appeared on Expedients to get off that, and did not think it reasonable to preclude him from it by these own Messages.

There was one Thing at the Debate gave some Direction to the House, An honourable Member declaring himself against bailing Dr. Sackville, said, He would put them in Mind of the Case of Mr. Thompson (*ante* Vol. VII. Pag. 491.) He was a Parson too, he was impeached by the Commons for High Crimes and Misdemeanours; he was bailed by them; he afterwards ran beyond Sea, turned Priest, and so evaded their Justice; and he believed this Fellow (as he was pleased to call him) would do so too. To this, another Gentleman answered, He believed the noble Lord was at much mistake in his Conclusion, as he was in his Premises: He did not believe the Doctor would run away, if he was to bail. And as to the Precedent of Mr. Thompson, the noble Lord was mistaken in every Part of it, except that he was a Parson; for he was not bailed by the Commons, neither did he run beyond Sea, and turn Priest, and evade their Justice; for the Parliament that impeach'd him was soon after dissolved: He was afterwards made Dean of Bristol, and lived and died so.

January 9.

Mr. Dolben reported from the Committee appointed to draw up Articles of Impeachment against Dr. Henry Sackville, That they had drawn up Articles accordingly, which they had directed him to report to the House: And he read them in his Place, and afterwards delivered them in at the Table, where they were read.

It was then proposed, That it being impossible the Members could make their Observations on the Articles in such Readings, and the Honour of the House being concerned to have these such as might be justified, a little Time should be allowed, before they were read the second Time, to consider them; and to convince others, they intended not Delay in it, they only asked till *Wednesday*. This was ordered; but then it was moved, that no Copies might be taken of the Articles, because it was not proper they should be made public in the Coffee-Houses, nor showed to the Doctor, before they were agreed on, and carried up to the Lords. On the other Hand, it was urged, this was precluding Members of their Right, by unreasonable Suppositions; that they had a Right to take Copies of any Papers before the House, for their Information; and it was not to be imagined, they would publish the Articles in Coffee-Houses, or show them to the Doctor. And, what if they did show them to him? Were they to be kept a Secret from him? Would he not have a Copy of the Articles ordered him by the Lords, as soon as they were carried to them? And what Advantage would it be to him, or Disadvantage to the Commons, to see them sooner? But if Copies were not to be taken of the Articles, it was no Favour, no Benefit to put off the Consideration of them; it had an Appearance of doing what was fair and reasonable, but would, in Truth, be doing nothing; for without taking Copies of them, they could not be considered. And it having been said, by one Gentleman, That this was an extraordinary Thing, and what had never been done before; another replied, He thought it extraordinary, but could not agree, it had never been done before; he remembered the like, when Sir John Fenwick's Confession had been read in the House of Commons; they were ordered to be read up by the Speaker, that no Copies might be taken of them. He did not approve that Precedent so well as to follow it; he wished Copies had been taken of those Papers, and that they had been printed, he believed, the Kingdom would have been the better for them at this Day.

After these Discourses, this Motion was moved.

January 11.

The Order of the Day being read, for the Reading a second Time the Report from the Committee to whom it was referred to draw up Articles of Impeachment against Dr. Henry Sackville;

Ordered,

That the Report be read Paragraph by Paragraph.

Then the first Paragraph (being the Preamble to the Articles) being read, and a Motion being made, and the Question being put, That the Report be re-committed; it passed in the Negative.

Yea 139, Nay 232.

Ordered,

That Candles be brought in, and Candles were brought in accordingly.

Resolved,

That the House doth agree to the said first Paragraph.

Then the Articles being severally read, one by one, were (upon the Question severally put thereupon) agreed unto by the House, to be the Articles to be exhibited against the said Dr. Henry Sackville.

Then the last Paragraph being read, the same was also agreed unto by the House.

Ordered,

That the Articles be engrossed.

There were great Debates in relation to the re-committing the Articles of Impeachment. In which, great Mistakes were seen in the Preamble to the Articles, the Recitals partial, and wrong Inferences drawn from them. And the Articles were said to be so loose and uncertain, it was impossible any one could plead to them; and it was proposed, that those who drew them up, would let the House know, on what Paragraphs in the Sermon they were grounded. To this was answered, That was too early, when they only had the Preamble under Consideration; when the Articles were read, they would produce the Passages in the Sermon. But then, though the Passages were desired, they called for the Questions, and never performed what they had promised.

January

January 12.

The Engrailed Articles of Impeachment against Dr. Henry Sacheverell read.

Ordered,

That the said Articles be carried to the Lords by Mr. Dolben.

At this Time, there was no Debate nor Division upon the Articles, only a Negative to the Question of carrying them up to the Lords. Gentlemen saw how hardly they had been treated the Day before by the Majority, and therefore contented themselves with swearing their Dislike of the Proceedings in this Manner.

Mr. Dolben carried these Articles to the Lords, who read them the first Time, and took Dr. Sacheverell into the Custody of the Black-Rod.

January 13.

The Sergeant at Arms acquainted the House, That, in pursuance of their Order of the 15th of December last, he did Yesterday deliver Dr. Henry Sacheverell to the Deputy of the Gentleman-Usher of the Black-Rod, and had taken a Dr. charge for him.

Dr. Sacheverell petitioned the Lords to be bailed. Their Lordships ordered a Committee to enquire into the Validity of his Bail; allowed him Council, and a Copy of the Articles.

January 14.

Dr. Sacheverell is obliged to give in his Answer to the Articles next Wednesday. The Lords accepted of Dr. Langley, Vice-Chancellor of Great, and Dr. Roper, for his Bail. And accordingly he was bailed, himself in a Recognizance of 6000 l. and in Sureties twice in speed.

Sergeant Pratt, Sir James Harcourt, Mr. Raymond, and Mr. Phipps, are allowed by the Lords, to be Counsel for Dr. Sacheverell, and Mr. Haggins to be his Solicitor.

January 16.

Dr. Sacheverell, upon his Petition, has farther Time given him to put in his Answer.

January 15.

Dr. Henry Sacheverell attended the House of Lords, and delivered in his Answer to the Articles of Impeachment against him, which was read. And being asked, Whether or no he would abide by it? He answered in the Affirmative; and then the Doctor was ordered to withdraw. These Lordships sent his Answer down to the Commons.

A Message from the Lords, by Mr. Rogers, and Mr. Hinchey, That they were commanded to acquaint the House of Commons That Dr. Henry Sacheverell hath put in his Answer to the Articles of Impeachment, sent from the House of Commons against him, which their Lordships communicate to the House, and desire that the said Original Answer may be returned with convenient Speed.

Ordered,

That the said Answer of Dr. Henry Sacheverell, now sent from the Lords, be read To-morrow Morning.

January 16.

The Answer of Dr. Henry Sacheverell, sent from the Lords Yesterday, was, according to Order, read, and

Ordered,

That the Answer of Dr. Henry Sacheverell, sent from the Lords Yesterday, be referred to the Committee, who were appointed to draw up Articles of Impeachment, which were exhibited by the Commons to the Lords, against Dr. Henry Sacheverell, for High Crimes and Misdemeanours; and that they do consider thereof, and report their Opinion, what is most proper to be done towards the farther Proceedings thereof. And they have Power to send for Persons, Papers, and Records. And they are to meet at such Times and Places as they shall think fit.

February 1.

Mr. Dolben reported from the Committee, to whom the Answer of Dr. Henry Sacheverell was referred to consider of the said Answer, and report their Opinion, what is most proper to be done towards the farther Proceedings thereof. That they had considered the same, and that they do find there are contained therein many Things not warranted by the Course of Proceedings upon Impeachments, foreign to the Charge, unbecoming a Person impeach'd, and plainly designed to reflect upon the Honour of the House; and do humbly submit to the Judgment of the House their Opinion, That for avoiding any Imputation of Delay to the Committee, in a Case of so great Importance, a Replication be forthwith sent up to the Lords, maintaining the Charge of the Commons; and the Committee have accordingly prepared the Copy, which they had directed him to report to the House; and he read the same in his Place, and afterwards delivered the Report as at the Table, where the same was read. And the Replication being read a second Time,

Resolved,

That the said Replication be the Replication of the Commons to the Answer of Dr. Henry Sacheverell.

Ordered,

That the Replication be Engrailed. There were Debates in relation to the engraving of the Replication, when the Commons were desired to flow, that there was in Dr. Sacheverell's Answer, an answer to the Charge; 1. Place days upon Impeachments, foreign to the Charge, unbecoming a Person impeach'd, and plainly designed to reflect upon the Honour of the House.

The ensuing into these Particulars was declined, for which Reason, and because the Answer appeared full and fresh, there was a Division upon engraving the Replication; in which the Yeas were 182, and the Nays 85.

February 3.

The engrailed Replication of the Commons to the Answer of Dr. Henry Sacheverell, was read.

Ordered,

That the said Replication be sent to the Lords.

Ordered,

That the Original Answer be returned to the Lords.

February 4.

That the Debate do carry the Original Answer of Dr. Henry Sacheverell, and the Replication thence, to the Lords.

February 4.

A Message from the Lords by Sir Richard Holford and Mr. Gery, That they were commanded to acquaint the House of Commons, that their Lordships have appointed Tuesday next, at seven of the Clock in the Morning, for the Trial of Henry Sacheverell, Doctor in Divinity, the Bar of their House; and that their Lordships will take Care, that there will be Convenience made there for the Managers of the House, at this Trial, upon the Impeachment against him.

Resolved,

That the Managers be appointed to make good the Articles of Impeachment against Dr. Henry Sacheverell.

Ordered,

That the Committee to whom it was referred to draw up the said Articles, be the said Managers.

Resolved,

That the House will be present at the Trial of the Impeachment against Dr. Henry Sacheverell, as a Committee of the whole House.

Ordered,

That a Message be sent to the Lords, to acquaint them with the said Reference, and to desire, that a convenient Access should be made to be prepared for them. And,

Ordered,

That Mr. Bramley (who moved this Motion) do carry the said Message to the Lords.

The House divided on this Question, Yeas 13, Nays 18.

There was a long Debate upon this Message, in which the several Proceedings of the Trial of Sir John, and the Trial and Verdict of the House of Commons, were taken into Consideration, and the Commons agreed to be present at their Trial, which the Lords agreed to, being convinced by the Reason of the Commons. It was said, that the first regular Trial upon an Impeachment in Parliament, in the present Method, was the Trial of the Earl of Strafford, and the Commons declared and insisted, they had a Right to be present at the Trial as an House, or a Committee of the whole House, as they thought fit, and that they had it in their Power, that they may justify their Proceedings, in the giving in his Case to demand Justice. In the Case of the Lord Viscount Stafford, the like Accommodation was never disputed, but in that of the Smugglers it was, and the Lords would have done justice without an Impeachment for High Crimes and Misdemeanours, and for High Treason; which the Commons insisted, being, That the different Nature of those Crimes related only to the Punishment, and did not alter and change the Nature of the Court. And in the strength of this, and other Arguments, which may be seen in the Reports of the Conference, and free Conferences, entered on their Journals, they did, at last, prevail.

February 6.

A Message from the Lords by Mr. Gery and Mr. Hinchey, That the Lords had commanded them to acquaint the House, that in as much as their Lordships have ordered the Lords with White Staves, humbly to move Her Majesty from their House, that she will be pleased to give Order for a Place to be prepared in Westminster-Hall, for their Lordships to proceed upon the Trial of Henry Sacheverell, Doctor in Divinity, who now stands impeach'd before their House.

February 7.

The Lords received a Message from Her Majesty, that Her Majesty would give Order for a Place to be prepared in Westminster-Hall, for their Lordships to proceed upon the Trial of Henry Sacheverell, Doctor in Divinity, who now stands impeach'd before their House.

February 8.

A Message from the Lords by Mr. Medley and Mr. Follett, That they were commanded by the Lords to acquaint the House, that Her Majesty hath given Order, that a Court be prepared in Westminster-Hall, for the Trial of Dr. Henry Sacheverell, which it will take up some Time, and that therefore the Trial cannot be at the Time appointed, but that as soon as the Place is prepared, the House shall have Notice of the Day of Trial.

Ordered,

That the Managers appointed to make good the Articles of Impeachment against Dr. Henry Sacheverell, have Power to find for Persons, Papers, and Records.

Ordered,

That Mr. William Barron be appointed Solicitor to the said Managers, for prosecuting the said Impeachment.

February 15.

Sergeant Pratt, and Mr. Raymond, having declared being Counsel for Dr. Henry Sacheverell, the Lords, upon his Petition, directed him to Mr. Dan, Mr. Dole, and Dr. Harcourt, for his Counsel; as also, Sir James Harcourt, and Mr. Phipps, before allowed by their Lordships; and Mr. Haggins his Solicitor.

February 18.

The Lords appointed Monday next Seven-night for the Trial of Dr. Henry Sacheverell.

The Trial, accordingly, began on Monday the 27th of February, (Vide the Trial in Vol. V.) Which Day, and the following Days, a great Concourse of People attended Dr. Sacheverell from his Lodgings at the Temple, to Westminster, and at his Return, with great Acclamations and Shouts, &c.

A Complaint was made in the House of Commons of their Riots. And,

March

March 1.

Reflected.

That as several Members preferred to Her Majesty, That She will be graciously pleased to take effectual Measures to suppress the profane Tumults, let on foot and fomented by Papists, Nonjurors, and other Enemies to Her Majesty's Title and Government; and to issue her Royal Proclamation, promising a Reward to such as shall discover and seize those Incendiaries, as have been the Occasions of the late Tumults and Disorders.

No Member in the least justified these Tumults; and all professed a Readiness to concur in an Address for the suppressing them; but desired the Address might be so framed, in such general Words, that it might pass unanimously. They excepted to those Words, *Set on foot and fomented by Papists, Nonjurors, and other Enemies to Her Majesty's Title and Government*; because it did not appear, any Papists or Nonjurors were concerned in them; and there was no Reason to believe they were; but if it was certain, there were such Persons; and at certain, that, by their Principles, they would lay hold on any Opportunity, and join with any People, to disturb the Peace and Quiet of the Government; for they hoped to stir in troubled Waters.

There was a Debate upon adding that Word, in which, a certain Gentleman argued against it, *because it was not to be imagined, they would be for pulling down their own Motives-Heads*. A plain Confession, that the Designers were Royalists; for which his Party blamed him.

The House divided upon the Word *Rebels*, Yeas 114, No's 379.

The same Day, Mr. Secretary Boyle reported to the House, That he had attended Her Majesty with their Address: To which Her Majesty had been pleased to give this very gracious Answer:

"HER Majesty is extremely sensible of the great Care and Concern of the House of Commons for the publick Peace, upon this Occasion; and as Her Majesty has a just Reluctance at these tumultuous and violent Proceedings, so she will take immediate Care for suppressing them; and will lose no Time in endeavouring to find out the Authors and Abettors, in order to bring them to Punishment: And so that Purges, will cause a Proclamation to be published, according to the Desire of this House."

Reflected, *Nuncio Contradictor*.

That the humble Thanks of this House be returned to Her Majesty, for Her most gracious Answer to their said Address.

Ordered, *Nuncio Contradictor*.

That a Committee be appointed to draw up an Address upon the said Resolution.

And a Committee was appointed accordingly.

And they were ordered immediately to withdraw into the Speaker's Chamber, to draw up the said Address.

March 3.

Sir Thomas Parker reported the Address, which was as follows:

The humble ADDRESS of the House of Commons to the Queen.

Most Gracious Sovereign,

"WE Your Majesty's most dutiful and loyal Subjects, the Commons of Great-Britain, in Parliament assembled, out of a deep Sense of the repeated Injuries of Your Majesty's unparalleled Goodness, beg Leave to return our most hearty Thanks for Your most gracious Answer to our late humble Address, and for your effectual Care in suppressing these rebellious Tumults, which were set on foot, and fomented by Papists, Nonjurors, and other Enemies to Your Majesty's Title and Government, in Defence of the just Prosecution of the Commons against Dr. Henry Sacheverell.

"And we most humbly beseech Your Majesty to believe, that as this Resolution proceeded only from the indissoluble Obligation which we, Your faithful Commons, looked upon ourselves to lie under, not to sit still and patiently see the Justice of the late happy Revolution, and the Glory of our late Royal Deliverer reflected upon Your Majesty's undoubted Title struck at, Your Administration, by which so many Blessings are derived upon us, endeavoured to be rendered odious to the People, and represented as destructive of the Church and Constitution, the potent Establishment and Protestant Succession undermined, the Resolutions of Parliament treated with Contempt, the Governors of the Church, and Your Majesty, as Supremes, aspersed and vilified, the Toleration exposed as wicked, and Sedition violently availing the Pulpit.

"So the Maintenance of Your Majesty's Right, the Safety of Your Person, the Quiet of Your Government, the Continuance of our happy Liberty under Your excellent Administration, the Succession in the Protestant Line, the Support and Honour of the Church of England, as established by Law, with that Toleration which is by Act of Parliament allowed to Protestant Dissenters, shall be our constant Care and Concern: And we will, upon all Occasions, venture all that is dear to us, in Defence of such inestimable Blessings."

Great Exceptions were taken to the Address; and it was moved, That it might be re-committed, because the Committee had exceeded their Commission, which was only to return Her Majesty Thanks for Her most gracious Answer; but they had taken upon them, in this Address, to state the whole Matter of the Impeachment, and to give their Opinions upon it, which was not only irregular, contrary to the Order of the House, but prejudging a Case then depending before another Judicature. And the last Paragraph there was a Promise, to venture all that was dear to them, in Defence of the Toleration, as well as of the Church of England. This was held to be putting both upon a Level, upon an equal Foot, which as many Gentlemen could not think proper, and never intended, so it was not true; for though they should be always willing to maintain

the Toleration, yet they would not venture to venture for this, as for the Church of England. But all these Exceptions were over-ruled, and the Address was drawn up manifestly contrary to the Rules and Order of the House, yet the Majority agreed to it, as it was repeated.

The Trial proceeded, and the Lords gave their Votes for it, *Whether Dr. Henry Sacheverell was guilty of High Treason and Misdemeanors, charged upon him by the Impeachment of the House of Commons?* And a Majority voted him Guilty.

March 21.

Reflected.

That the Thanks of this House be given to the Members who were appointed the Managers of the Impeachment against Dr. Henry Sacheverell, for their faithful Management, in the Discharge of the Trust reposed in them.

And Mr. Speaker gave them (they standing up in their Places) the Thanks of the House accordingly.

There was no Precedent pretended for this, besides the giving the Thanks of the House to the Attorney-General, Sir *Henrery Finch*, afterwards Lord Chancellor, and Earl of Nottingham; and the Motion was further supported by some Encomiums on the Managers Performances. This Matter was opposed by several Gentlemen, who showed a wide Difference between this Case and that of my Lord Chancellor Nottingham, who had the Thanks of the House for maintaining their Rights and Privileges at a Conference between the Two Houses, in 1671, concerning the Commons false Right of giving Money; which was the more remarkable, because he was, at first, of Opinion, That, in the particular Point then in Controversy, the Commons were in the Wrong. But the House having determined against his Opinions, and appointed him to be a Manager at the Conference, he applied himself to the searching the Records, and with indefatigable Labour and Study, discovered such Precedents, and so firmly supported the Commons Right, that the Commons thought it proper to make him that honourable Acknowledgement. It was also urged, That there were Managers upon former Trials, that had not the Thanks of the House: And though these Gentlemen might have done their best in the Discharge of the Service the House required from them, yet they deserved not such Distinction. Many declared, the Managers did not speak their Sense, and that they could not approve what they had advanced, particularly, in justifying Resistance, and declaring against Passive Obedience and Non-Resistance, which was the Doctrine of the Gospel, and of the Church of England, and universally established by the Union of the Two Kingdoms; and some of them denied the Queen's Hereditary Right, affirming that she had only a Parliamentary Right; and that, as to the Hereditary Right, the Pretender had a much better Title to the Throne. That in these Influences, they exceeded their Commission, which could not be understood to allow them in any thing more, than speaking in Defence of the Resistance at the Revolution, much less to meddle with the Queen's Title, which gave Offence to many that heard them.

Another Reason against giving them Thanks, was, because of their railing and reviling Language to the Doctor, unbecoming any Council in a Criminal Prosecution, and much unbecoming Managers of the House of Commons. In which it was hard to say, whether they showed more Brutality or Inconsideracy.

And because of their giving up the Honour of the House, in following of Mr. Daboe to explain himself, when the Lords required it: In which Case, he should not have complied, without consulting the House, and taking their Directions.

And one Gentleman spoke to this Effect, just before the Question: That though he was against giving them the Thanks of the House, yet he could not forbear mentioning one Reason for it, that had been omitted by others, but was, in his Opinion, stronger than any they offered; and that was, because he was sure they would have Thanks no where else.

There was a Division of the House, the Yeas were 175, No's 116; and it was observable, that in this Question, all the Managers present at the House (except Mr. Daboe, whose singular Modesty was the more remarkable) voted for their having Thanks.

March 22.

A Message from the Lords by Mr. Rogers and Mr. Hancock, That the Lords had commanded them to acquaint this House, that their Lordships are now ready to give Judgment against Dr. Henry Sacheverell, if this House, with their Speaker, will come and demand the same.

Reflected.

That this House will demand Judgment of the Lords against Dr. Henry Sacheverell.

Some Gentlemen spoke against demanding Judgment, laying down these Reasons:

That the Lords could not give Judgment, unless the Commons demanded it; and that the Commons were at Liberty, whether they would demand it or not, according to the Reason given by the Commons, when they insisted to be present at the Trial of the Earl of Strafford, as a Committee of the whole House, That they held it fit and necessary, that all the Members should be present at the Trial, to the End, every one might justify his own Conscience, in giving his Vote to demand Judgment. And when that Trial was over, no Judgment was demanded. In the present Case, they were against demanding Judgment, because of the Precedent of this Proceeding, which might be very dangerous to innocent Men hereafter; for none could be safe, if mere Innovators, the most forced and strained Constructions, and Passages misapplied, should be admitted for Evidence. They thought the Lords had made dangerous Promises, in taking upon them to declare the Law and Usage of Parliament, without one Precedent for it, and directly contrary to many for the Case of Dr. *Momcay* could not be a Precedent, he summing, and pleading Guilty. The Lords also put the Question of Guilty upon all the Articles together, which is such a complicated Question, they could not give their Votes freely, and it was said to be a Reason, why some of them did not vote: And the Lords, who are both Jury and Judges, were not under the Obligation of an Oath, or upon their Honour.

Diffident.

Because we humbly conceive, there are no Reflections therein contained on the Memory of the late King *William*, nor the Resolution; and that there is no Offence charged therein upon Dr. Sacheverell, against any known Law of the Land.

<i>Ye. Esr.</i>	<i>Ormond,</i>	<i>Hemlin,</i>
<i>Wynn,</i>	<i>Anglia,</i>	<i>Berthor,</i>
<i>St. John,</i>	<i>St. John,</i>	<i>Thames,</i>
<i>Sturges,</i>	<i>Buckingham,</i>	<i>Sturges,</i>
<i>Passell,</i>	<i>Crom,</i>	<i>Nightingale,</i>
<i>Beaufort,</i>	<i>Wynne,</i>	<i>North and Grey,</i>
<i>Denbigh,</i>	<i>Suff,</i>	<i>Crom,</i>
<i>Stewart,</i>	<i>Leinster,</i>	<i>Leinster,</i>
<i>Yarmouth,</i>	<i>Osborne,</i>	<i>Alington,</i>
<i>R. Porter,</i>	<i>Norris,</i>	<i>Gen. Bath and Wall,</i>
<i>N. Dursley,</i>	<i>Tia. Ruffin,</i>	<i>Pymoth,</i>
<i>St. John,</i>	<i>Northampton,</i>	<i>Guiford,</i>
<i>Howard,</i>	<i>Mar,</i>	<i>H. London,</i>
<i>Beley, Sr.</i>	<i>Leigh,</i>	<i>Dorchester,</i>
<i>Sey and Sol,</i>	<i>W. John,</i>	<i>Harrold,</i>
<i>W. C. John,</i>	<i>Crom,</i>	<i>Leinster,</i>
<i>Willingby, Sr.</i>	<i>Garrick,</i>	

Then the main Question was put;

That the Commons have made good their first Article of Impeachment against Henry Sacheverell, Doctor in Divinity.

It was refused in the Affirmative.

Diffident.

Buckingham,
Sturges,
Berthor,
Sturges,
Passell,
Beaufort,
Denbigh,
Stewart,
Yarmouth,
R. Porter,
N. Dursley,
St. John,
Howard,
Beley, Sr.
Sey and Sol,
W. C. John,
Willingby, Sr.

Because by the Laws of the Land, the Laws of Parliament, and the inherent Rights of Peers, every Peer is to judge for himself, both of the Facts, as well as of the Law, and cannot be precluded by any Majority; which indeed must determine the Case in respect of the Criminal; but never did nor can preclude any Lord from voting the Party accused Guilty or Not Guilty of the Facts, as well as of the Crime of such Facts.

Suff,
Northampton,
Yarmouth,
Sturges,
W. C. John,
North and Grey,
Thames,
Denbigh,
Wynne,

Stewart,
Crom,
Howard,
Gen. Bath and Wall,
Garrick,
Crom,
Leigh,
Leinster,
Alington,

To the Questions upon the second, third, and fourth Articles, we dissent, for the same Reason as is given against the Question upon the first.

Buckingham,
Berthor,
Nightingale,
Sturges,
Passell,
Howard,
H. London,
Harrold,
Ormond,
Willingby, Sr.
Garrick,
Ye. Esr.
N. Dursley,

Hemlin,
Beaufort,
Denbigh,
Yarmouth,
Sturges,
Passell,
Alington,
Crom,
Northampton,
Leigh,
W. John,
Guiford,
Leinster,
W. C. John,
Gen. Bath and Wall,

Dir. Sacheverell, 18 March, 1709.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Question to be put to each Lord in *Willingby-Hall* shall be,

Henry Sacheverell, Doctor in Divinity, guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons? And the Answer thereto shall be, Guilty, or Not Guilty, only.

Diffident.

Buckingham,
Sturges,
Alington,
Leinster,
Northampton,
Ye. Esr.
W. C. John,
Tia. Ruffin,
N. Dursley,
Sturges,

1. Because we do humbly conceive, that the obliging every Lord to answer generally, Guilty, or Not Guilty, to a Question containing all the Articles of the Impeachment, is a Kind of tacking upon ourselves, by an unnecessary joining of Matters of a different Nature, and subjecting them to one and the same Determination; and consequently may prejudice the Right every Peer has to give a free Affirmative, or Negative; since whoever thinks Dr. Sacheverell guilty of one Part, and innocent of the other, will be obliged either to approve what he condemns, or condemn what he approves.

2. We do humbly conceive, there is at least a Possibility, that though a Majority of the House, if admitted to vote on the Articles separately,

may think him innocent upon each Article; yet, by this Method of a general Answer, he may be condemned of all; which seems not to be consistent with the usual Method of Justice in this House.

3. We do humbly conceive, that since the Judgment of the House in this Case ought to be a Declaration of the Law, the Conduct of the People will be most miserable, to have Punishment inflicted for High Crimes and Misdemeanors, and not to have a Possibility of informing themselves what the High Crimes and Misdemeanors thereby punished are; for the People's only Guide is the Law; and they can never be guided by what they can never be informed of: And we do humbly conceive, that this Uncertainty being in the Case of a Clergyman, for preaching, it may possibly create some Fear in good Men, whose they preach some Doctrines of the Church of England, particularly that of Non-Resistance; and may be made use of by ill men, as an Excuse for the Neglect of that Duty, which, upon some Occasions, is required of these, even by the Laws of the Land.

<i>Ormond,</i>	<i>Beaufort,</i>	<i>Berthor,</i>
<i>Sturges,</i>	<i>Anglia,</i>	<i>Thames,</i>
<i>Denbigh,</i>	<i>Northampton,</i>	<i>Yarmouth,</i>
<i>Leigh,</i>	<i>Leinster,</i>	<i>Sturges,</i>
<i>Nightingale,</i>	<i>H. London,</i>	<i>North and Grey,</i>
<i>Stewart,</i>	<i>R. Porter,</i>	<i>Alington,</i>
<i>Wynne,</i>	<i>Passell,</i>	<i>Leigh,</i>
<i>Crom,</i>	<i>Howard,</i>	<i>Crom,</i>
<i>Osborne,</i>	<i>Pymoth,</i>	<i>Willingby, Sr.</i>
<i>Willingby, Sr.</i>	<i>Guiford,</i>	<i>Leigh,</i>
<i>Harrold,</i>		
<i>Gen. Bath and Wall,</i>		

Dir. Lane, 20 March, 1709.

The House, pursuant to the Orders of *Saturday* last, adjourned into *Willingby-Hall*.

And being there, the House was refused, and the Lord Chancellor declared, That the Lords had agreed upon a Question to be put to each Lord severally.

Then his Lordship put the Question, beginning at the Junior Baron first, as follows:

Is Dr. Henry Sacheverell guilty of High Crimes and Misdemeanors, charged upon him by the Impeachment of the House of Commons?

And having asked every Lord present, and they having declared, Guilty, or Not Guilty, his Lordship having call up the Votes, declared him Guilty.

Diffident.

Suff,
Thames,
Nightingale,
Crom,
Northampton,
Leigh,
Yarmouth,
Sturges,
Beaufort,
W. John,
Ormond,
Berthor,
N. Dursley,
Crom,
Sturges,

Leigh,
Yarmouth,
Ye. Esr.
Leinster,
Northampton,
Wynne,
Alington,
Passell,
H. London,
Garrick,
Gen. Bath and Wall,
Sey and Sol,
Osborne,
Pymoth,
Crom,
W. C. John,

Buckingham,
Sturges,
Mar,
Wynne,
Guiford,
Crom,
Anglia,
Sturges,
Denbigh,
Howard,
Tia. Ruffin,
Berthor, Sr.
Stewart,
Leinster,

Dir. March, 21 March, 1709.

Ordered.

That the Judgment to be passed in the Case of Dr. Henry Sacheverell shall be,

That he be enjoined not to preach during the Term of three Years next ensuing: That his two printed Sermons, referred to by the Impeachment of the House of Commons, shall be burnt before the Royal Exchange in London, between the Hours of _____ and _____ on the _____ Day of _____ by the Hands of the common Hangmen, in the Presence of the Lord Mayor, and the two Sheriffs of London and Middlesex.

Diffident.

Ye. Esr.
Sturges,
Northampton,
Crom,
Howard,
North and Grey,
Sturges,
N. Dursley,
Wynne,
Gen. Bath and Wall,
Guiford,

Buckingham,
Berthor,
Alington,
Crom,
Yarmouth,
H. London,
Pymoth,
Tia. Ruffin,
Garrick,
Gen. Bath and Wall,
Guiford,
Leigh,

N U M B E R XXXVII.

The following Address, and Opinions, being authentick, are, it is conceived, of Importance enough to give them a Place in this Collection. The Address was presented by the Lord Bishop of Litchfield and Coventry, and the Lord Bishop of Ely, April 17, 1711, 10 Anne.

To the Queen's most Excellent Majesty,

The humble ADDRESS of the Archbishop and Bishops of the Province of Canterbury, in Communion assembled.

May it please Your Majesty,

WHEREAS one *William Whiston*, a Professor of the Church of England, and late Professor of Mathematics in the University of Cambridge, who was, in October last, expelled the said Religion received and established by publick Authority in this Realm, has since that Time, and a little before the sitting of this present Convocation, printed and published an *Hypocritical Preface* to certain Writings of the same pernicious *Deist*, intended for the Press, in which he has advanced several damnable and blasphemous Assertions against the Doctrine and Worship of the Ever-Blessed Trinity: Expressly contradicting the Two Fundamental Articles of the *New Creed*; and defaming the whole *Atheism*; and last had the Confidence to inscribe and direct (as said printed Preface to the Convocation now Assembled:

And whereas we take ourselves to be bound in Duty to God, and to his Holy Trinity, and in Obedience to Your Majesty's pious Instructions signified to us with Your Gracious Licence, to repress the said Blasphemy; and also obliged in Vindication of our firm Adherence to the true Faith, and for the Preservation of the same in the Members of our Communion, to call the said *William Whiston* before us, in order either to his Amendment, or Exclusion from the Communion of the Church of England; but to yet find ourselves hindered from going on, by some Doubts arising among ourselves concerning our Power to do so; and proceed

For that the Court of Convocation being Final, or the last Resort, from which no Appeal is provided by the Statute made in the 15th Year of Henry the Eighth, Chap. 19. it may seem to be doubtful how far a Prosecution, without Appeal to the Crown, will be consistent with the Statute made in the first Year of Queen Elizabeth, Chap. 1. 1577, whereby all Jurisdiction, and particularly for Reformation of Errors, Heresies, and Schisms, is united and annex'd to the Imperial Crown of this Realm; and also how far it will be consistent with the Statute of Appeals, made in the 15th Year of Henry VIII. Chap. 19. which, in the Courts of the Appeals directed to be hereafter made, doth not mention Convocation. May it please Your most gracious Majesty, out of Your known Zeal for the Honour of God, and the Good of his Church, to lay this Case before Your Reverend Judges, and others whom Your Majesty in Your Wisdom shall think fit, for their Opinion, How far the Convocation, as the Law now stands, may proceed in Examining, Censuring, and Condemning such Tenets as are declared to be Heresy by the Laws of this Realm; together with the Authors and Maintainers of them.

[Upon this Address to the Queen, Her Majesty was pleas'd to refer the whole to the Twelve Judges, and to her Attorney and Solicitor-Generals, who being several Times assembled together, and debating the Matter, came to the following Resolution.]

To the Queen's most Excellent Majesty.

May it please Your Majesty,

IN humble Obedience to Your Majesty's Royal Command, signified to Your Judges by the Right Honourable the Lord-Keeper, We whose Names are subscribed have considered the Questions mentioned in the Address hereto annexed, and are humbly of Opinion, That since the Statute of 23d of Henry VIII. against Crying out of the Diocese, and those Statutes of the Ever-Blessed Trinity, the Convocation hath not any Jurisdiction originally to cite before them any Person for Heresy, or any other Spiritual Offence, which according to the Laws of the Realm may be cited, censured, and punished in the respective Ecclesiastical Courts or Jurisdictions of the Archbishops, Bishops, and other Ordinaries; who, we conceive, have the proper Jurisdiction in those Cases, and from whom and whose Courts the Parties accused may have their Appeals; the last Resort wherein is lodged in the Crown. In which Statute for Crying out of the Diocese, and in the others, as far as relates to Appeals for such Offences, no Notice is taken of the Convocation, either as to Jurisdiction, or Appeal. Nor doth it say any words to us in whom the pretended jurisdictional Power of a Convocation, either before or since the said Statutes, (if any such they ever had) resided; whether in the whole Body of the Convocation, or in Part. But it is plain by the first Statute, That the

Archbishops' Jurisdiction, even in Case of Heresy, is bounded so that he cannot proceed against such Offenders within any other Diocese than his own, without the Consent, or in the Default of the Diocesan Bishop. All which Statutes being made for the Safe and Benefit of the Subjects, they cannot, as we humbly conceive, be deprived of the Benefit of them by any Presence of Jurisdiction in the Convocation; from which we cannot find or be inform'd of an Instance of Appeal. Nor have any Judicial Precedents or Authorities for Convincing or Convicting of such Offenders in any Convocation since these Statutes, or the Reformation (which is now near 180 Years), appear'd unto us. And if such Power should be allow'd to the Convocation, we conceive it would invade the ordinary Jurisdiction of the Archbishops and Bishops, which we conceive are preserved by the Act of Parliament made in the 15th Year of the Reign of his late Majesty King Charles the First, Chap. 11. and by another made in the 15th Year of King Charles the Second, Chap. 12. and by the Act made the 29th Car. II. Chap. 9. which took away the *Writ De Heretico Comburendo*, in some of which any Mention is made of the Convocation. And by the Bill of Rights, 1 Will. & Mar. it is enacted, That the Commission for correcting the late Court of Convocation for Ecclesiastical Causes, and all other Commissions and Courts of like Nature, are illegal and pernicious. But we conceive that Heretical Tenets and Opinions may be examined and condemn'd in Convocation, authorized by Royal Licence, without convening the Authors or Maintainers of them. All which we most humbly submit to Your Royal Majesty's Great Wisdom.

May 26th, 1711.

Edw. Ward, J. Boscawen,
Robert Darnley, & L. Leitch.

The other Paper here follows.

Me, it please Your Majesty,

IN Obedience to Your Majesty's Commands, signified to us by the Right Honourable the Lord-Keeper of the Great Seal, in relation to the Humble Address of the Archbishop and Bishops of the Province of Canterbury, in Convocation assembled, hereto annex'd, We whose Names are subscribed, have taken into Consideration the Doubts and Questions therein stated.

And after Conference with the rest of the Judges, We are humbly of Opinion, that of Common Right there lies an Appeal from all Ecclesiastical Courts in England to Your Majesty, in virtue of Your Supremacy in Ecclesiastical Affairs, whether the Case be given by express Words of any Act of Parliament, or not: And that no Act of Parliament has taken the Issue away. And consequently, that a Prosecution in Convocation, not excluding an Appeal to Your Majesty, is not inconsistent with the Statute of 1 Edw. Chap. 1. but preserves the Supremacy entire.

As to the Question propo'd in the said Address, How far the Convocation, as the Law now stands, may proceed in Examining, Censuring, and Condemning such Tenets as are declared to be Heresy by the Laws of this Realm, together with the Authors and Maintainers of them, we understand it to import only these two things: Whether a Jurisdiction to Examine, Censure, and Condemn such Tenets, and the Authors and Maintainers thereof, could ever be exercised in Convocation? And if it could, Whether it be taken away by any Act of Parliament?

And We humbly lay before Your Majesty, That all our Law-Books that speak of this Subject, mentioning a Jurisdiction in Matters of Heresy, and Condemnation of Heretics, as proper to be exercised in Convocation, both before and since the Acts of Parliament mention'd in the Address; and none of them, that we find, making any Doubt thereof; and we observe nothing in those, or any other Acts of Parliament, that we think has taken it away. We are humbly of Opinion, That such Jurisdiction, as the Law now stands, may be exercised in Convocation.

But this being a Matter which, upon Application for a Prohibition, on behalf of the Persons who shall be professed, may come in Judgment, before such of us as have the Honour to serve Your Majesty in Places of Judicature; we desire to be understood to give our present thoughts with a Reserve of an entire Freedom of altering our Opinions, in case any Records, or Proceedings, which we are now Strangers to, shall be laid before us, or any new Considerations which have not occurred to us, be suggested by the Parties, or their Councils, to convince us of our Mistake.

T. Parker, L. Pugh, R. Prior, E. Northey, T. Trevor, T. Barr,
R. Bpke, R. Raymond, J. Poul, R. Trog.

N U M B E R

NUMBER XXXVIII.

A Declaration, signed by ARCHIBALD HUTCHESON, Esq. and given to several of his Acquaintance soon after he had perused the Examination of CHRISTOPHER LAYER, in the Appendix to the Report of the Secret Committee; in which LAYER has made Mention of his Name, as one of Burford's Club, which the said LAYER, in his Examination, saith, he was told by one PLUNKET.

March 4, 1722-3.

HAVING read Part of the Examination of *LAYER*, of the 10th of January, and 4th of February last, in the Appendix to the Report of the Secret Committee; in which *LAYER* is mentioned to have said, that one *Plunket* told him, as explaining a bar was meant by *Burford's Club*; That *Lord Grey* was Chairman, and that the Club met weekly, at one another's House; as *LAYER* thought; and that *Plunket* told him, That there were eight other Lords, and six Commissioners (whose Names he mentions, and more as of them), of that Club: I do hereby declare, upon the Honour of a Gentleman, That I do not know, or believe, that there was a Club, or Meeting, of any of the Lords or Gentlemen mentioned in the said Examination, nor have I ever heard of any Meeting where *Lord Grey* was present, except that which was carried on in the two last Sessions of Parliament, when *Lord Grey*, and several Lords and Gentlemen (not mentioned in *LAYER's* Examination), met weekly, and I believe, with great Innocence, and at one another's Houses. And I do further affirm, That even on accidental Visits, I have seldom met together any two of the Lords and Commissioners so mentioned in *LAYER's* Examination: That there are two of these Commissioners (*Sir Henry Gwyn*, and *Mr. Dawson*), whose Faces I do not know, and two others (*General Webb*, and *Sir George Phipps*), between whom and me there has not been, for fifteen Years last past, the least converse or of occasional Visits, and between me and the fifth Commissioner (*Mr. Sturges*), but very seldom: That there are three of these Lords, (*Sir John, Gwyn, Gwyn*), with whom I have very little Acquaintance, but in Visits to others, or in public Places; and a fifth, (the Bishop of *Salisbury*), in whose Company I have been but twice in three Years Time. I mention this, to show the notorious Falshood of *LAYER's* Hear-by Evidence of *Burford's Club*, an Application I never heard of, till some Time after the Appointment of the Secret Committee.

ARCH. HUTCHESON.

The Declaration of William Earl Cowper: shewing, That the Matters contained in four Hear-bys, relating to him, in the Examination of Christopher Layer, are false and groundless.

March 20, 1722-3.

THOUGH Hear-by does not affect any one, either in Law or Reason, yet it deserves Contradiction, where the Truth will bear it, especially if pressed: And therefore, finding that *LAYER*, in his Examinations of the 19th of Jan. and 4th of Feb. last, hath said, That one *Plunket* told him (as explaining what was meant by *Burford's Club*), That *Lord Grey* was Chairman; and that *Lord Cowper*, and seven other Lords, and six Commissioners named, were of that Club; and that this Club met monthly, as he, *LAYER*, thought, at one another's Houses; and not doubting but my Avowment will be believed before any Hear-by, especially from one in *LAYER's* said Circumstances: I do hereby declare and affirm upon my Honour, That I do not know, or believe, and never heard, before the said Examinations were taken - &c. that there was any such Club, or Meeting: That as to three of the Commissioners named, viz. *Sir Henry Gwyn*, *Mr. Dawson*, and *Mr. Sturges*, I do not know them so much as by Sight, and as for two of the remaining three Commissioners, viz. *Sir George Phipps*, and *General Webb*, I have not been in their, or either of their Companies, at any Time within fifteen Years last past: And as to the Lords, I never met them, or any of them, but either accidentally on Visits of Ceremony, or in the Time of Parliament, and that with other Lords, on the Business of Parliament only. And as for one of the said Commissioners, whom I am acquainted with, viz. *Mr. Hildesley*, I never once was at any Meeting with him together with any of the said Lords or Commissioners. And whereas *LAYER*, in his Examination of the 19th of September last, first, That *Lord Grey* told him, that *Lord Cowper* told him (*Lord Grey*), that 200 Tories, and 50 Gracianites, would try their last Effort in the House of Commons: And in another Examination, of the 21st Day of the same Month, *LAYER* repeats the same, except that he useth the Words, *Angry Whigs*, instead of the Word *Gracianites*: I do hereby declare and affirm upon my Honour, That I never said so to *Lord Grey*, nor to that Effect, nor any Thing like it: And I do therefore verily believe, That *Lord Grey* never said that I did.

COWPER.

NUMBER XXXIX.

Upon the Trial of a PEER†.

THERE is to be a Commission under the Great Seal, constituting a Lord High-Steward for that Occasion.

If the Great Seal be then in Commission, a Speaker of the House of Peers is to be appointed by special Commission.

The King's Writ of *Cartamari* is to be directed to the Commissioners of Oyer and Terminer, for Middlesex, to remove the Indictment found before them against the Prisoner.

The Return whereof, with the Record of the Indictment, is to mention the Time of the Inquest of the Grand Jury, and when the Fact was committed.

A Precept is to be directed to the chief Governor of the Tower, to bring his Prisoner to the Court.

If the Trial be by special Commission, a Sheriff is to be appointed to summon the Lords the Teyers, and so do other Services, who is to have a Writ to Warrant.

The Lord Chamberlain of the Household (or, in his Absence, the Vice-Chamberlain), is to know when his Majesty will be attended for receiving the Lord High-Steward's Staff, and delivering it to the Officers, who are to present it to the High-Steward, and is to give Notice thereof to Garter King of Arms, and to the Usher of the Black-Rod.

Upon this Notice, the Black-Rod is to provide a White Staff, eight or nine Feet long, and he and Garter are to attend with it at the King's Bedchamber, or where his Majesty appoints, and to deliver it to the Lord Chamberlain, who is to present it to the King on his Knee, and Garter, and the Black-Rod in the Bedchamber, or at the Place appointed, are to receive it jointly from the King, on their Knees, with his Majesty's Discretion to whom it is to be delivered.

Hereupon, Garter and Black-Rod are to wait upon the Lord High-Steward, and to give him an Account thereof, and so know when he will please to be attended to the Trial.

On the Morning of the Trial, at the Hour appointed by the Lord High-Steward, the Judges in their Scarlet Robes, (unless in Time of Mourning) together with Garter, and the Black-Rod, and the Sergeant at Arms, who is to make the Proclamation, are to assemble at the Lord

High-Steward's House, and are to wait on him above Stairs, or where he pleases to receive them, Garter being in his Coat of Arms, the Black-Rod having the White-Staff, and the Sergeant at Arms bearing his Mace, where they all have a Collation.

The Lord High-Steward is to be called His Grace upon this Occasion, during the Trial.

After a short Stay, His Grace the Lord High-Steward comes down to his Coach with:

His Grace's Gentlemen, Two and Two, bare-headed.

His Sergeant at Arms, and Seal-Bearer (if the Lord High-Steward be Lord-Chancellor, or Lord-Keeper), both bare-headed, one with the Mace, the other with the Purse.

The Black-Rod with the Lord High-Steward's Staff, and Garter King of Arms on his right Hand, both bare-headed.

Then his Grace the Lord High-Steward, in his usual Habit (unless he be Lord-Chancellor or Lord-Keeper, and then in his rich Gown, his Train borne), followed by the Chief-Justices and Judges.

His Grace's Gentlemen, to the Number of Eight, Twelve, or Sixteen, as his Grace pleases, first take their Coaches without the Gate, four in a Coach, each Coach having two Horses only.

Then the Lord High-Steward takes his Coach with six Horses, within the Court, at the Foot of the Stairs, facing himself on the hinder Seat of the Coach singly, Garter (and the Seal-Bearer), sitting over-against his Grace bare-headed, the Black-Rod in the right Hand-Boot of the Coach, with his Grace's White Staff, and his Grace's Sergeant at Arms in the left Boot, with his Mace.

The Judges take their Coaches without the Gate, and follow his Grace.

When the Trial is by special Commission, a Messenger is to be sent a little before, to acquaint the Lords the Teyers, (who are to assemble in, or near the House of Peers, or in the Exchequer Chamber) that his Grace is coming, in order to their taking their Seats in the Court but behind, and then his Grace goes directly to *Hypocrite's Hall*, by the Way of the New Palace Yard.

† The Declarations of Mr. *Hildesley*, and *Lord Cowper's*, should be read after the Examination of *LAYER*, in Vol. VI. and after the Appendix to the Report relating to that Trial. *Plunket* is not to make their own Declarations on *LAYER's* Hear-by Evidence.

† Mr. *Grey* King, *Jane's* Herald having wrote the Misdemeanors upon the Trial of a Peer, we thought it not improper to give it a Place here, so such Account being published in the State Trials.

